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Floor Debate  
March 28, 2011

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[LB35 LB84 LB90A LB90 LB102 LB104 LB106 LB152 LB204A LB204 LB229A LB229  
LB235 LB251 LB276 LB384 LB387 LB420 LB431 LB460 LB509 LB512 LB541 LB558  
LB665 LR40CA LR130]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-third day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Thomas Scherer, Community of Christ Church in Lincoln, Nebraska, that's Senator Fulton's district. Would you please rise.

PASTOR SCHERER: (Prayer offered.)

SENATOR GLOOR: Thank you, Pastor Scherer. I call to order the fifty-third day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: I have no corrections.

SENATOR GLOOR: Are there any messages, reports, or announcements?

CLERK: One item, Mr. President. LB84 has been reported to Select File. That's the only item I have. (Legislative Journal page 967.) [LB84]

SENATOR GLOOR: (Gavel) Chair recognizes the Speaker, Senator Flood.

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Floor Debate  
March 28, 2011

---

SPEAKER FLOOD: Thank you very much, Mr. President. Good morning, members. A couple of notes this week. I'm going to be handing out in just a moment here, with Laurie's help and the page's help, a letter on consent calendar. We are going to have a consent calendar and it will most likely be run in the first part, first half of April. A couple of conditions, and the memo does a better job of outlining the pathway to getting a bill on consent calendar. But first and foremost, those bills have to be reported to the floor by March 31. That doesn't mean they were advanced out of the committee, that means the Clerk actually has the paperwork by March 31, which is this week. Secondly, you have to have the chair's consent before it's placed on consent calendar. And the chairs are the ones that write the letters to my office and they must be received no later than 5:00 p.m. this Friday. So if you have a bill that you would like to be on consent calendar, start visiting with the committee chair of the committee of subject matter jurisdiction. And the chairs will be responsible for forwarding those lists to my office by 5:00 p.m. this Friday. As far as this week, how it's going to shape up, you'll see we have an aggressive General File agenda before us today. We'll work until 5:00 today. We're going to stay with this agenda pretty much through tomorrow noon. Tomorrow at 1:30 we're going to take up some Select File. Wednesday morning we'll continue with basically what you see here on General File. And then Wednesday at 1:30 we're going to begin debate on Senator Fischer's LB229, which is a bill that relates to the Water Resources Cash Fund and the Nebraska Environmental Trust. That's pretty much our week. We're going to make as much progress on General File as possible. And then next week, amidst all of our other priorities, we are going to work on Senator Adams' and the Education Committee's LB235 as it relates to state aid to K-12 education. That will be up next week. That's a quick reminder as to where we're going. If you have any questions, please see me. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Mr. Speaker. Mr. Clerk, we will proceed to confirmation reports.

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Transcriber's Office  
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Floor Debate  
March 28, 2011

---

CLERK: Mr. President, the first of several reports this morning is from Judiciary, involves three appointments to the Community Corrections Council. (Legislative Journal page 897.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on your confirmation report.

SENATOR ASHFORD: Thank you, Mr. President. The Judiciary Committee voted unanimously to approve the appointment of three people to the Community Corrections Council. All three of these individuals are reappointees and I urge your support for them. The first candidate is Jeffrey Davis. He is the Sarpy County Sheriff. He is able to provide a very valuable law enforcement perspective to the council. Sheriff David has been a dedicated public servant for over 35 years with the Sarpy County Sheriff's Office and the Bellevue Police Department. The second individual is Thomas Dorwart of Sidney, who is also a reappointment for another three-year term on the Community Corrections Council. And Judge Dorwart is a retired county court judge from Cheyenne County. While on the bench, he set up a drug court that serviced neighboring communities and allowed successful participants to live at home and remain gainfully employed. Judge Dorwart has had a clearer dealing with issues involving community corrections and is a valued member of the commission. Frank Peak of Omaha is the final reappointee to the Community Corrections Council. And like others, he will serve a three-year term, until August 29, 2013. Mr. Peak has a long history in community and political activism and social justice leadership in our community in Omaha. He is currently the administrator of Community Outreach Services for the Creighton Medical Center Partnership in Health, which works to provide health education and affordable healthcare to underserved and economically challenged families. Mr. Peak has served in many capacities and on many boards with an aim to promote health and wellness in schools and communities across the state of Nebraska. Mr. Peak will fill the place on the council reserved for a mental health provider. With that, Mr. President, I would urge the adoption of the report for these three candidates. Thank you.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Thank you, Senator Ashford. There are no senators wishing to speak. Senator Ashford, you're recognized to close on the report. Senator Ashford waives. Members, the question is the adoption of the report offered by the Judiciary Committee. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 967-968.) 34 ayes, 0 nays on adoption of the Judiciary Committee confirmation report.

SENATOR GLOOR: The report is adopted. Continuing with confirmation reports, Mr. Clerk.

CLERK: Second report, Mr. President, this morning by the Governor, Military and Veterans Affairs Committee involves an appointment of a colonel to the Nebraska State Patrol. (Legislative Journal page 908.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Avery, you're recognized to open on your confirmation report.

SENATOR AVERY: Thank you, Mr. President. The Government, Military and Veterans Affairs Committee held a hearing on Thursday, March 17 to take up the nomination of Lieutenant Colonel David Sankey for appointment to serve as the superintendent of Law Enforcement and Public Safety for the Nebraska State Patrol. The committee voted favorably on his appointment with a 7-0 vote, one member was absent. Colonel Sankey is exceptionally qualified for this position. He has been with the State Patrol since 1987. He is a 1986 graduate of the University of Nebraska at Kearney, where he majored in criminal justice. He began his career in road operations and was promoted to sergeant. He served as the commander of the Internal Affairs Division, the Professional Standards Division, as liaison to the Nebraska Unicameral and the Governor's Office. He was a

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Transcriber's Office  
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Floor Debate  
March 28, 2011

---

major in charge of the Investigative Services Division. And on January 1, 2009, he was appointed by Colonel Bryan Tuma to serve as the assistant superintendent where he served until he was appointed to the position of superintendent by Governor Heineman, on March 1, 2011. The committee recommends strongly that you confirm this appointment. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Avery. The floor is open for discussion. Chair recognizes Senator Pirsch.

SENATOR PIRSCH: Thank you. Mr. President, members of the body, I'd just like to rise in support of this candidate. He has a wealth of experience and knowledge with the Patrol and I think he'd be perfect for the job. So I urge his confirmation. Thank you.

SENATOR GLOOR: Thank you, Senator Pirsch. There are no further senators wishing to be recognized. Senator Avery, you're recognized to close. Senator Avery waives. The question is the adoption of the report offered by the Government, Military and Veterans Affairs Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 968-969.) 36 ayes, 0 nays, Mr. President, on the adoption of the Government Committee confirmation report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, the next report is by the Agriculture Committee and involves an appointment to the Nebraska State Fair Board. (Legislative Journal page 924.)

SENATOR GLOOR: Senator Carlson, you are recognized to open on your committee report.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. The Agriculture Committee wishes to report favorably upon the appointment of Lowell Minert to the Nebraska State Fair Board and recommends that the body approve the appointment. Lowell Minert is appointed as a representative of the business community residing in the Third Congressional District. He was appointed by the Governor to complete the term of the seat held by Sally Atkins, who resigned earlier this year. And he would be eligible for this and two additional three-year terms. The confirmation hearing was held March 17 with Mr. Minert present to answer questions by the committee. Mr. Minert brings an impressive background and connections in the livestock industry matters and we believe he'll be an asset to the Fair Board in attracting livestock exhibits at the State Fair and regional and national livestock shows to utilize the excellent facilities we have in place in Grand Island. The committee voted unanimously to recommend approval of Mr. Minert's appointment. I move the adoption of the Ag Committee report on the confirmation of Lowell Minert and appointment to the State Fair Board. Thank you.

SENATOR GLOOR: Thank you, Senator Carlson. We move to discussion. Senator Fischer, you are recognized.

SENATOR FISCHER: Thank you, Mr. President and members of the body. I would like to thank the Ag Committee for sending out this appointment. Mr. Minert is one of my constituents. As Senator Carlson said, he has a very impressive background with his public service, not just to his local community but statewide. And I know he will do an excellent job on the State Fair Board. I'd also like to take this opportunity to publicly thank Sally Atkins who served as a member of the State Fair Board and most recently as chairman for the successful fair that was held in Grand Island this past summer. She has just done an excellent job. She is a hard working, wonderful person, again, one of my constituents. But she has done an excellent job. She is just a top, top person and I know that Mr. Minert will do a fantastic job on this board. Thank you, Mr. President.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Thank you, Senator Fischer. There are no further senators wishing to be recognized. Senator Carlson, you're recognized to close. Senator Carlson waives. Members, the question is the adoption of the report offered by the Agriculture Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 969.) 36 ayes, 0 nays, Mr. President, on the adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. We continue with confirmation reports. Mr. Clerk.

CLERK: The next report, by the Natural Resources Committee, involves an appointment to the Nebraska Natural Resources Commission. (Legislative Journal page 932.)

SENATOR GLOOR: Senator Langemeier, you are recognized to open on your report.

SENATOR LANGEMEIER: Mr. President, members of the body, thank you. This report is the appointment of Mr. Stan Clouse to the Nebraska Natural Resources Commission. His hometown is Kearney, Nebraska. We had a hearing on March 23, 2011, where he appeared and stood the questions of the committee. He is account manager for the Nebraska Public Power District out there. He is currently the mayor of the city of Kearney, and that's the position he is filling is the elected community position. He's been a past-member of the city council, a member of the Nebraska League of Municipalities, and the recipient of the 2010 University of Nebraska at Kearney Student Affairs Community Partnership Award. He attended Mid-Plains Community College and Kearney State College. And he was advanced from committee unanimously. We'd ask for your adoption of Mr. Stan Clouse to the Nebraska Natural Resources Commission. Thank you.

SENATOR GLOOR: Thank you, Senator Langemeier. There are no senators wishing to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

be recognized. Senator Langemeier, you're recognized. I'm sorry, Senator Hadley. Senator Hadley waives. Senator Langemeier waives closing. Members, the question is the adoption of the report offered by the Natural Resources Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 969-970.) 34 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, I have a report from the Education Committee that involves three appointments to the Nebraska Educational Telecommunications Commission. (Legislative Journal page 945.)

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Adams, you're recognized to open on your committee report.

SENATOR ADAMS: Thank you, Mr. President. Members of the body, we actually have four different categories of appointments here this morning, if you will be patient. The first one is to the Nebraska Educational Telecommunications Commission. We actually have three appointments to that position. The first is Dennis Baack. I think most of you know Dennis, former member of this body, lives here in Lincoln. He would be a new appointment. He is the executive director of the Nebraska Community College Association and he would fill the position on the NET Board that is required to be filled by a community college representative. Thank you, Mr. President. Should we take one at a time or...

CLERK: One report has the three names. So if you wanted to...

SENATOR ADAMS: All right, very good. The second appointment to the Nebraska



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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

Educational Telecommunications Commission is Mr. Steve Seline, he's from Omaha. He is a new appointment to the commission, has some background in it. He formally is president of Walnut Private Equity Partners. And the third appointment is Darlene Starman. She is a reappointment; lives here in Lincoln and is a realtor with Woods Brothers. Thank you, Mr. President.

SENATOR GLOOR: Are there members wishing to be heard? Seeing none, Senator Adams, you're recognized to close. Senator Adams waives. Members, the question is the adoption of the reports offered by the Education Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 970-971.) 34 ayes, 0 nays, Mr. President, on adoption of the confirmation report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, second report by the Education Committee involves an appointment to the Board of Educational Lands and Funds. (Legislative Journal page 971.)

SENATOR GLOOR: Senator Adams, you are recognized to open on your report.

SENATOR ADAMS: Mr. President, this is a single appoint to the...actually, it's a reappointment to the Board of Educational Lands and Funds, Mr. Charles Ward from Valentine, Nebraska, owner of a business there and a former ranch manager. Thank you.

SENATOR GLOOR: Seeing no members wishing to be recognized, Senator Adams, you're recognized to close. Senator Adams waives. The question is the adoption of the report offered by the Education Committee. All those in favor vote aye; all those

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

opposed vote nay. Have you all voted? Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal page 971.) 35 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR GLOOR: The report is adopted. Continuing with the Education Committee reports, Mr. Clerk.

CLERK: Mr. President, the third report by Education involves three appointments to the Board of Trustees of the Nebraska State Colleges. (Legislative Journal page 945.)

SENATOR GLOOR: Senator Adams, you're recognized to open on your report.

SENATOR ADAMS: Thank you, Mr. President. There are three appointments to the Board of Trustees of the Nebraska State Colleges. The first one is a reappointment, Gary Bieganski from Chadron, Nebraska. He's self-employed and he is a former president and CEO of the Community Hospital in McCook. The second, Robert Engles, from Auburn, Nebraska, is a new appointment, operates an insurance and real estate agency in Auburn and former mayor of Auburn, former school board member in Auburn. And the third is Carter Peterson from Wayne, Nebraska, a reappointment. And he, too, is in the insurance business and a graduate of Wayne State College. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Adams. We move to discussion. Senator Fulton, you are recognized.

SENATOR FULTON: Thank you, Mr. President, members of the body. I wanted to speak favorably upon the appoint of Robert Engles. He's from my hometown, have known him my entire life, is a very hard worker, diligent, educated and the Governor has made a good appointment here. I can speak very favorably and I can speak very highly

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

for him. And I'm proud that he got this appointment. Hopefully, everyone will confirm with their green vote. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Fulton. Seeing no further senators wishing to be recognized, Senator Adams. Senator Adams waives. Members, the question is the adoption of the report offered by the Education Committee. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 971-972.) 33 ayes, 0 nays, Mr. President, on adoption of the report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, the final report this morning by Education Committee involves two appointments to the Technical Advisory Committee for Statewide Assessment. (Legislative Journal page 945.)

SENATOR GLOOR: Senator Adams, you're recognized.

SENATOR ADAMS: Thank you, Mr. President. These are the final two appointments, colleagues. They are to the Technical Advisory Committee for Statewide Assessment. The first one is a reappointment, Wayne Camara from New York. He's vice president of Research and Development for the College Board. And the second appointment is also a reappointment. The statute requires for a Nebraska administrator to be on that board and this would be the reappointment of Dallas Watkins from Benkelman, Dundee County Public Schools. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Senator Adams. There are no members wishing to be recognized. Senator Adams waives. Members, the question is the adoption of the report offered by the Education Committee. All those in favor vote aye; all those opposed vote

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

nay. Record, Mr. Clerk.

CLERK: (Record vote, Legislative Journal pages 972-973.) 35 ayes, 0 nays, Mr. President, on adoption of the Education Committee confirmation report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

CLERK: Mr. President, some items. Senator Ashford has amendments to LB460 to be printed; Senator Fischer to LB229. New A bill, Senator Fischer offers LB229A. (Read by title for the first time.) And I have a hearing notice from the Judiciary Committee regarding amendments to LB460. That's all that I have, Mr. President. (Legislative Journal pages 973-974.) [LB460 LB229 LB229A]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we now move to General File, appropriations bill. Mr. Clerk.

CLERK: Mr. President, LB90A is a bill by Senator Burke Harr. (Read title.) [LB90A]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Burke Harr, you are recognized to open on LB90A. [LB90A]

SENATOR HARR: Thank you, Mr. President. This is an appropriation of \$44,480 from the Uniform Commercial Code Cash Fund, not General Fund, Cash Fund, for fiscal year 2012-13 to the Secretary of State to aid in carrying out the provisions of LB90. The expenditures are for permanent and temporary salaries and per diems for funds to amend the software, as I understand it. The Secretary of State estimates this change will result in a 5 to 20 percent of existing financial statements being amended, which will create an income of approximately \$177,000 to \$711,000. Thank you. [LB90A LB90]

SENATOR GLOOR: Thank you, Senator Harr. Are there members wishing to be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

recognized? Seeing none, Senator Harr, you're recognized to close. Senator Harr waives. The question is the advancement of LB90A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB90A]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB90A. [LB90A]

SENATOR GLOOR: The bill advances. Continuing with General File, Mr. Clerk. [LB90A]

CLERK: LB35, offered by Senator Harms. (Read title.) Introduced on January 6, referred to Transportation, advanced to General File. There are committee amendments pending. (AM512, Legislative Journal page 695.) [LB35]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Harms, you're recognized to open on LB35. [LB35]

SENATOR HARMS: Thank you, Mr. President, colleagues. This is a simple bill... [LB35]

SENATOR GLOOR: (Gavel) [LB35]

SENATOR HARMS: ...which simply would amend Section 60-6,298 of our statutes to extend the number of days from 120 to 200 that permits can be given for trucks which exceed the weight limit. This change was brought to my attention by professional truck drivers in western Nebraska, especially those who haul sugar beets, as well as the Western Sugar Cooperative. The beet harvesting season is longer than 120 days and currently truckers must keep applying for extensions of their permits in order to complete the harvest. This change would especially help the sugar industry. LB35 is important to western Nebraska because it's a major source of driving its economy. For example, Western Sugar Cooperative employs 350 full-time employees, 332 seasonal employees, 390 additional employees and they contract for hauling with 175 employees. They have a payroll of \$15.7 million, plus they pay their growers \$70.3

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

million, as well as spending another \$44.2 million in the region. The average beet campaign over the last few years has been well over 120 days. A good harvest lengthens the campaign. For example, one ton increases the yield per acre that lengthens the campaign by one full week. The campaign days for the last seven years are as follows: 131 days in 2005, 158 days in 2006, 126 days in 2007, 147 days in 2009, 136 days in 2010. Only the 2008 crop fell below 120 days at 115. In the past, they've been given permission by the Nebraska Department of Transportation Permit Office here in Lincoln to go over the 120-day limit, but they've been told that this will no longer be the case. It's possible that the beet campaign will approach well over 200 days in the near future. If Western Sugar would be limited to a 120-day campaign due to these permits, then it could eliminate the sugar beet production in counties outside of Scotts Bluff County, including Chase, Cheyenne, Deuel, Keith, Perkins, and Sheridan Counties. Keeping the limit at 120 days without at least providing for extension would simply have a huge impact on the economy in western Nebraska. This is not a time to really slow that economy, it's just holding its own. And by not allowing this to happen would really be damaging to western Nebraska. I guess, it's really time for us to do whatever is necessary to encourage our growth. Colleagues, I would encourage you to support LB35. There is an amendment that Senator Fischer will introduce that I do support. Thank you, Mr. President. [LB35]

SENATOR GLOOR: Thank you, Senator Harms. As the Clerk mentioned, there are amendments from the Transportation and Telecommunications Committee. Senator Fischer, as Chair of that committee, you're recognized to open on the amendment. [LB35]

SENATOR FISCHER: Mr. President and members, the committee amendment, AM512, increases the maximum renewal period to 210 days. This keeps the renewal period in increments of 30 days for easier integration with the Department of Road's electronic permit system. This is a simple amendment to a good bill and I would ask for your support. Thank you. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Thank you, Senator Fischer. Members, you have heard the opening on LB35 and AM512. Are there senators wishing to be recognized? Senator Christensen, you are recognized. [LB35]

SENATOR CHRISTENSEN: Thank you, Mr. President. Colleagues, this is a very important bill for where the sugar beet industry is and development. Basically, what happens out there is farmers all are racing against the clock. They can't have the ground freeze and get these beets locked into the ground, so they're quickly trying to service and harvest this as quickly as possible. It is taken to dump site locations where it's weighed. And then it is hauled out from there throughout the winter to the plants and things this way. And it is a very demanding time and they have to get these, like I said, out of the ground before they're frozen in, then they have to turn and haul them to the processing plants and it is a very long, tedious process. And I encourage you to support the amendment and the bill. Thank you. [LB35]

SENATOR GLOOR: Thank you, Senator Christensen. Senator Carlson, you are recognized. [LB35]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would like to address a couple of questions to Senator Harms, if he would yield. [LB35]

SENATOR GLOOR: Senator Harms, would you yield? [LB35]

SENATOR HARMS: Yes, I would. [LB35]

SENATOR CARLSON: Senator Harms, I'm asking questions not because I oppose the bill, I don't. I have had a constituent, who's a county supervisor, ask some questions to me about similar...a little bit similar situations where overloads are transported on our roads. Now these vehicles are all fully licensed, aren't they? [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR HARMS: That's correct. [LB35]

SENATOR CARLSON: And they have the permit for this extra hauling? [LB35]

SENATOR HARMS: That's correct. [LB35]

SENATOR CARLSON: And now with Senator Fischer's or with the Transportation and Telecommunications amendment putting it in multiples of 30 makes it a little bit easier, I guess, from the standpoint of issuing these permits. Would that be correct? [LB35]

SENATOR HARMS: That would be correct. [LB35]

SENATOR CARLSON: In your experience, has there been additional noticeable wear and tear on the roads as a result of these permits or is that something that you don't believe is a problem? [LB35]

SENATOR HARMS: Well, that's a...thank you, Senator Carlson, that's a great question. That question came up in the committee hearing. And the truck drivers and the people who are basically the experts explained and what I understand, at least from the hearing, Senator Carlson, it does not have, according to them, a major impact. It has to do with the axle and the spreading out of that and balancing the weight of the wheels of the units that they're hauling. So that's my understanding of it. It doesn't have a major impact to it. But, you know, that may be up for debate, but that's what we were told. And I think also I know that Senator Loudon had a pretty good understanding of that and maybe he'll jump into this conversation here a little bit later to maybe give you a better explanation. [LB35]

SENATOR CARLSON: Okay. So it sounds like with technology and spacing of axles and tires and so forth that we would maybe hope that the wear and tear on the roads,



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

additional wear and tear is at a minimum. [LB35]

SENATOR HARMS: That would be correct. I guess, when we look at it without these permits being able to be extended, Senator Carlson, they simply would not be able to complete their harvest. And there would be a lot of beets that would not be able to get to the sugar factory to be processed. So this really is pretty important to us. And I don't think we'll see too much more wear to it as I understand it. But I could stand as corrected if someone else has other information. [LB35]

SENATOR CARLSON: Okay, thank you, Senator Harms. Certainly, the sugar industry is a part of agriculture and agriculture is our number one industry and we need to cooperate and do things that help them whenever we can. And so I am in support of LB35 and the underlying amendment. Thank you, Mr. President. [LB35]

SENATOR GLOOR: Thank you, Senator Carlson. Senator Karpisek, you are recognized. [LB35]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. Would Senator Harms yield, please. [LB35]

SENATOR GLOOR: Senator Harms, would you yield? [LB35]

SENATOR HARMS: For you, Senator Karpisek, I'd be happy to yield. [LB35]

SENATOR KARPISEK: Thank you. I was going to ask the same thing that Senator Carlson asked about the wear and tear on the roads. I'm sorry, I cannot believe that this isn't going to put more wear and tear on the roads. And just by asking the truckers that, I don't know about that. So maybe we will have that debate. My other question is, did you say that this is a struggling industry? [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR HARMS: No, I did not say it was a struggling industry. I think it's a very good industry. It will struggle if the extension does not occur, Senator. [LB35]

SENATOR KARPISEK: So you're in favor of helping out an industry that could struggle if they don't get some help? [LB35]

SENATOR HARMS: I know where you're going and that is correct. But there's a heck of difference between where you're headed and where I'm headed. [LB35]

SENATOR KARPISEK: No, I don't think there's any difference, Senator. And I'd like to talk about it. I wonder what we can do here and if we're going to put more wear and tear on the roads and we just had a huge debate last week about roads funding and saying that our roads are in bad shape and that we need to put more money toward them. And I voted for that bill. But now I wonder why we want to put more wear and tear on the roads? [LB35]

SENATOR HARMS: Actually, Senator, it actually adds more axles to the road and extends them out. It really does not as much damage as you would think. [LB35]

SENATOR KARPISEK: So then why don't we just raise our limits rather than try to push the days out? [LB35]

SENATOR HARMS: Raise the limit on what, Senator? [LB35]

SENATOR KARPISEK: Of the weight that...why don't we just say the limit to go over, just raise that limit so they don't have to even worry about getting an overload? [LB35]

SENATOR HARMS: Well, they just can't haul that much. I mean, they've got it to the max they can haul now. So they would have to extend other units to the back and that would provide to be extremely dangerous. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR KARPISEK: Okay. Well, Senator Harms, of course, knows where I'm going on this. And I am having a little bit of fun with him. And I definitely don't want to do anything to hurt the sugar beet industry. But I think that we have a lot of other industry here that maybe hauls things. And I don't know a lot about overload permits or anything like that and I'm sure there are quite a few. I am a little bit wondering, though, about other loads around this part of the state and our corn harvest and that sort of thing. And I'll probably ask Senator Fischer a little bit later on that. But I do want to make very clear, senators, when we talk about one industry and not another, how hypocritical we can sound. And we can argue fundamentals, we can argue many other things, but when we're looking at somebody that's just trying to do one thing to help themselves, I think that we need to open our eyes and our ears and our minds a little bit. Thank you, Mr. President. [LB35]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Schilz, you're recognized. [LB35]

SENATOR SCHILZ: Thank you, Mr. President. Members of the body, good morning. Welcome back. My district is heavily involved in the beet industry. I think Senator Harms is exactly right in what he's saying. I think it's important that we give those folks the leeway that they need. This year...with that, I'd like to take just a couple seconds. This year I introduced LB104 because, as we know, agriculture is changing. Most everything, if you stockpile it now, and that's what this goes towards, if you stockpile it, you can haul commodities with an increase in the...you know, with a cushion in how much you can haul. I think it's 15 percent. Back in the day, whatever you describe that as, used to be that if you'd take corn to the elevator you'd have a scale and you could weigh it. Well, today, modern farming and technology has figured out that, hey look, if we're going to store our commodity that's worth \$5 a bushel, you want to store it in a bin, and you want to store it as close to the field as you harvested it as possible so that you can get all the corn out as quickly as you need to. Well, this has caused a problem around and it's the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

same sort of problem that Senator Harms is dealing with, with the beets, to an extent. And what happens is that these folks are putting their corn in bins, not having an opportunity to weigh it, and then later on during the year, when they're taking their commodities to market, they have to unload it out of the bin without an opportunity to weigh it and drive it across the roads to get it to a scale and an elevator. And we're running into problems there as well in folks getting picked up by Carrier Enforcement and being checked out. And so I think it's not just beets that we need to look at, but I think it's all commodities and things are changing. I introduced a bill, LB104, this year to look into that. And the response that I got back was that it would tear up the roads too much so we can't do that. So...and I'm not sitting here saying that we shouldn't have it for beets. But I think that we need to look at how we haul our commodities and our products across these roads and the leniency that we give to folks. I know that we don't want to set folks up so that they can't have an opportunity to do things the right way. And unfortunately, the direction that we're going now with the way the industry is going, without putting individual scales in at each of these bin sites, which are vastly disbursed around the land, we run into those problems. So I would want folks to think about that as they move forward. One other thing, and like Senator Harms said, is exactly right, we also had a bill, LB102, where we were trying to come into line with the federal weight provisions to harmonize Nebraska with Wyoming and Colorado. But Nebraska locked its...or the feds locked those weights down and Nebraska was 2,000 pounds underneath both Colorado and Wyoming. So it's a federal issue there and we can't just increase the weight. So we're kind of stuck in a pickle. But I am for Senator Harms's bill, but I'm also for looking at ways to help our other commodity haulers and producers out there to make their lives a little easier as we move forward into the new age of agriculture. Thank you very much. [LB35 LB104 LB102]

SENATOR GLOOR: Thank you, Senator Schilz. Senator Hansen, you're recognized.  
[LB35]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature. I woke

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

yesterday with a cold and I haven't been able to shake that yet. I had a couple questions for Senator Harms also, if he would yield. [LB35]

SENATOR GLOOR: Senator Harms, would you yield? [LB35]

SENATOR HARMS: Yes, I would. [LB35]

SENATOR HANSEN: Senator Harms, is the weight permit the problem or is it just the length of the harvest going over...past the end of the year and into the next year? [LB35]

SENATOR HARMS: That's a good question, thank you. It's based on the length. They've just seen...they're just running out. And quite frankly, after 120 days, Senator, it's become a pretty good pattern. It looks like it's going to continue to do that. They're actually breaking the law. And I think they just want to make sure they have this thing corrected and don't continue to extend something that isn't within the law. [LB35]

SENATOR HANSEN: And what's the price of the permit? [LB35]

SENATOR HARMS: Pardon me? [LB35]

SENATOR HANSEN: I know it's already set but... [LB35]

SENATOR HARMS: I'm sorry, I didn't hear you. [LB35]

SENATOR HANSEN: What is the price of the permit,... [LB35]

SENATOR HARMS: You know, I don't know what... [LB35]

SENATOR HANSEN: ...of the overweight permit? [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR HARMS: It's not a lot. I don't remember exactly what that is but it's not real heavy financially. It only generates, if you look at the fiscal note here, if they extend it, it only generates about another additional \$1,000 in revenue, so it can't be very much. [LB35]

SENATOR HANSEN: Would Senator Fischer yield? [LB35]

SENATOR GLOOR: Senator Fischer, would you yield? [LB35]

SENATOR FISCHER: Yes, I will. [LB35]

SENATOR HANSEN: Thank you. Senator Fischer, last week we discussed LB84 and there was one handout passed around, and I'm not sure I can get my hands on it right now. But it talked about the overweight permits, overwidth, overweight permits that truckers use. Where I see them anyway is on the Interstate and I know they go north and south on some of the local roads too. But can you tell me what the permit, overweight permit for the trucks that Senator Harms is talking about is? It's on page 7 of the bill. [LB35 LB84]

SENATOR FISCHER: It...pardon me? [LB35]

SENATOR HANSEN: It's on page 7 of the bill. [LB35]

SENATOR FISCHER: Is it \$25? [LB35]

SENATOR HANSEN: Twenty-five dollars. [LB35]

SENATOR FISCHER: Thank you. [LB35]

SENATOR HANSEN: Does that include if we go to the 210 days with the amendment?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

[LB35]

SENATOR FISCHER: Yes. [LB35]

SENATOR HANSEN: That will be one permit, one \$25 permit to go 210 days with an overweight permit? And it will go over the calendar year, I mean, if they don't get done until January? [LB35]

SENATOR FISCHER: Correct, the problems with the days, as Senator Harms was talking about in the bill, is harvest season doesn't always coincide with the calendar year when you have the harvest. So that 210 days is for a calendar year and it extends it so that the haulers have more options on that then, Senator. [LB35]

SENATOR HANSEN: And if it goes over from, say, first of November to past the first of the year, can they get another permit at the end of the year? [LB35]

SENATOR FISCHER: Yes, they can. [LB35]

SENATOR HANSEN: I certainly approve of that. But I do question some of what Senator Karpisek says, that we're paying...that the truckers are paying \$25 for a 210-day permit. And I'm not sure that we're recovering enough money for the damage that it does to the roads. If we're talking about an overweight permit, and I don't know what they carry, I know sugar beets are very dense and they hardly ever fill the truck clear up. But it's still a very heavy product to haul on the road. What are the weight...what's the weight guidelines that they can buy an overweight permit in the state? [LB35]

SENATOR FISCHER: Senator Hansen, I'd have to look through the statutes. It's...I think it's 15 percent. But it...I would like to reinforce the point that Senator Harms made. We're increasing this, yes, but it, because it adds another axle and I don't pretend to be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

an expert when we get into all the axle talk, I told Senator Louden he's our resident expert on the committee when it comes to axles. But by adding that extra... [LB35]

SENATOR GLOOR: One minute. [LB35]

SENATOR FISCHER: ...axle it, in effect, places less stress on our roads. [LB35]

SENATOR HANSEN: Okay, thank you. But we do have, we have added axles. And I see this all the time on the Interstate, even with wet distillers now they're running a triple axle truck...tractor and a triple axle trailer, which looks like they are, you know, they're pushing the limit, too, because wet distillers is a very dense product where the weight continues to go up. We add axles but we're still not taking any weight off the road. If it is in fact, the speed limit is 75, the trucks are allowed to go over 80,000 pounds, I think this is what's damaging our roads. I do support the beet industry. I really think that it's a great industry, especially in western Nebraska and they need to continue. They need this permit certainly to go over the year. I think that whenever we get around to raising the prices for overload... [LB35]

SENATOR GLOOR: Time, Senator. [LB35]

SENATOR HANSEN: Thank you. [LB35]

SENATOR GLOOR: Thank you, Senator Hansen. Senators wishing to be recognized: Louden, Pahls, Dubas, Nelson, and Karpisek. Senator Louden, you are recognized. [LB35]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. I certainly support LB35. And I was glad Dr. Harms was able to prioritize this bill because this is something that needs to be done for the beet industry. I would like to point out, though, that where the discussion is going so far isn't exactly what the bill does. If you were



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

looking on pages 2 and 3 in the bill, that's all old language in there. And that already specifies the load limits. We're not extending any increase in weight, we're just increasing the time that the permit is for the length. If you will look there, there is, I think Senator Karpisek thought maybe there was just one industry that was being specialized like this. But you look in there, there's other...dry beans can be hauled for up to a certain number of miles overweight. If you haul grain from a field to the nearest elevator or something you can be 15 percent overweight. But if you haul cattle from a ranch to someplace you can't be 15 percent overweight. So there is one thing in there. And over the years we've tried to get livestock included in this. And in there also, if you'll notice, on page 2 it says in there, no permit shall authorize a weight greater than 20,000 pounds on any single axle. And that's the way it is. It don't matter how many axles you have under a truck, as Senator Hansen talked about these triple axle semis or cow crates as they are called, they still can't have over 20,000 pounds per axle. And usually if the axles are grouped together they can't be over about 19,000 pounds per axle. So that's been a question raised that if you had tandem axle trucks, which was two axles on the trailer, you should be entitled to 40,000 pounds, but you're not. I think you're entitled to about 38,000 and some pounds because the axles are within 7 feet or 9 feet or whatever the spread is. So this bill doesn't do anything about increasing any weights or tearing up anymore roads. What it does, it increases the time that these long trucks can be used to haul beets to the beet factory. And the reason for that is these beets are piled out in the countryside various places and then they're hauled in for the rest of the season into these processing plants and where we only have about two left, maybe one now in Nebraska, just Scottsbluff and there's one in Torrington, but where we have one. So there isn't enough room to pile the beets in Scottsbluff in order to have them there to go so this is what we have. The length has been lengthened out. And by doing that then they can't have over the 20,000 pounds per axle. They pull these trailers behind the semis and they are long and that's the reason you have to have a permit to do that. They're not allowed to pull these things year-round, they're only allowed to pull them during this particular time frame. And as I pointed out, the committee amendment changes from 220 to 210. And the reason for that was...is permits can be sold in 30-day

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

increments. In other words, if they wanted to buy a permit for 30 days they could or they could buy it for 60 days or whatever. And you can't divide 220 out by 30, so we changed it 210 so that they could actually buy seven permits individually there. And I'm not sure if they have to pay \$25 every time they buy a permit, but a lot of the truckers in the beet outfits don't buy the full 210 days or full length of time permits. They'll buy them for part of the year to see how many...how long the beet business will last and the hauling because some of those trucks out there, there could be...there are several hundred trucks that haul beets all at the same time... [LB35]

SENATOR GLOOR: One minute, Senator. [LB35]

SENATOR LOUDEN: ...when they do. So I think I would point out that this bill doesn't have anything to do about weight limits. It just has to do about extending the time frame that we can...that these people can buy permits to pull their overlength trucks. Thank you, Mr. President. [LB35]

SENATOR GLOOR: Thank you, Senator Louden. Chair recognizes Senator Pahls. [LB35]

SENATOR PAHLS: Good morning, Mr. President, members of the body. Senator Harms, I do support what you're trying to accomplish. I've been listening to the discussion and it's been brought to my attention that the beet farming is very important to the state of Nebraska. Although I know nothing about that type of farming, I can remember my dad said, as a kid, he used to go out there and work on the beet farms. But here's another...I'm looking for another twist. We're talking about the damage of the roads. Now we know right now salt really damages roads. Now what some states have done, they have used a by-product after the beets have been processed. They have used that product for the roads and it is actually more successful than salt. Now I don't know if the state of Nebraska does that. Basically, it's a deicer. Sounds like an interesting concept. But I will say this much and with a smile on my face, although it has

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

been used very successfully in a number of states, the reason why it probably hasn't been used in some of the metropolitan areas is because it does leave a stickiness on the roads. And that in turn, if you would walk into your house, I'm assuming that stickiness would follow you. But in some parts of the state, maybe the Interstate or some of those areas, that may be a different way of using a product other than, I don't know what they do with that, if they toss it or if they use it for feed or fertilizer, I do not know that. But like I say, some states actually do use that for their deicer. And that in turn would mean less salt. And we do know what salt does for the roads. So sometimes we do need to think outside the box. Thank you. [LB35]

SENATOR GLOOR: Thank you, Senator Pahls. Senator Dubas, you're recognized. [LB35]

SENATOR DUBAS: Thank you, Mr. President. Good morning, colleagues. I, too, rise in support of the amendment and the bill. I also introduced a bill this session, LB420, looking at tractors and grain wagons that are on our highways hauling commodities to various places. I didn't introduce it with the intention for the bill to advance. I introduced it as a way to get this very conversation going, raising the level of awareness as to how these roads or how these vehicles and the products that they transport impact our roads. I'm definitely planning on spending time during the interim looking into this further so that when we're having these kinds of conversations we really do know, fully understand what, if any, damage these types of trucks and tractors do to our roads. Some of the testimony that we had at this hearing was very enlightening for me. While we are all farmers across the state of Nebraska, our farm operations are definitely very diverse and we do a lot of different things in a lot of different ways. As Senator Loudon said, we aren't talking about increasing the weights of what these trucks are hauling. We're just allowing them to be able to apply for these permits in the amount of days that it takes them to get their harvest actually delivered to their processor. But one of the facts that was raised at the hearing, and perhaps Senator Harms has already mentioned this, but I think it would bear repeating is when we're talking about single

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

trucks versus trucks who are hauling a trailer behind them, one of the testifiers talked about it would take 37 trucks to haul 34 tons on seven axles, where it would take 48 trucks to haul 25 tons on five axles. So we would have 5 percent more weight per axle on a single truck and trailer versus a truck that's hauling a double trailer. So actually, according to the information that was given to us at the hearing, by having these extended trailers we are taking less weight off the road. So again, I think this is a really important discussion for us to have in light of the concerns that we are looking at with our roads and funding. And I am committed to continuing to work on it this session. But this bill, again, is just allowing these producers and those who work with the sugar beet industry to get their product delivered to their processor in a timely and efficient manner. Thank you. [LB35 LB420]

SENATOR GLOOR: Thank you, Senator Dubas. Senator Nelson, you are recognized. [LB35]

SENATOR NELSON: Thank you, Mr. President, members of the body. I'd like to ask a question of Senator Harms. [LB35]

SENATOR GLOOR: Senator Harms, would you yield to a question? [LB35]

SENATOR HARMS: Yes, I will. [LB35]

SENATOR NELSON: Senator Harms, I generally support the bill and the amendment. I just would like a little clarification, perhaps on if I understood what you said in your introduction. Did I understand you to say that there's a short or shorter season for the harvest of sugar beets? [LB35]

SENATOR HARMS: I didn't say that, I think Senator Fischer did. But, yeah, it is a short season. We'll start doing some real harvesting in latter part of September and October. The heavy then goes the last of October and November. So you have an issue that you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

have to fight the roads in order to get the beets out of the field and then to an area where they drop them off. And then we have to haul from the storage area to the actual factory so we can actually process these. So it is a short season. We have to get in and get out. [LB35]

SENATOR NELSON: You mentioned the freezing of the ground, before we get a freeze. That's to get the sugar beets out, get them harvested rather than the hauling, do I understand that... [LB35]

SENATOR HARMS: It's to get them out, yes. And the other side of it is that if the beets actually freeze it actually destroys a portion of the beet. So it's really important for them to get the beets from out of the ground into where they have placed then for a time being and then to the factory. And when you go to the factory, if you go by the factory you'll see that they have all kinds of straw and a substance that they spray over that to keep the middle of that sugar...middle of the...where the beets are stored so that it doesn't freeze and it keeps it a certain temperature. [LB35]

SENATOR NELSON: I am familiar with corn harvest and soybean harvest, but I've never seen a sugar beet operation. Do they have to be plowed or dug out of the ground, do they, the sugar beets? [LB35]

SENATOR HARMS: Yes, they do, they dig them out of the ground, they have equipment that goes in, a harvester that goes in and takes them out of the ground. From there they load it to a truck, the truck takes it over to an area where they're going to store them for a short period of time. And then the big trucks come in, pick them up and take them to the factory. [LB35]

SENATOR NELSON: All right. So time is of the essence then, I guess, in getting them out of the field to the dumping spot. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR HARMS: That's correct. [LB35]

SENATOR NELSON: Is the reason we're extending the time, it would seem to me then that once they're dumped and that part is done that then it's a matter of having these large semitrailers hauling them to the processing plant. Is that correct? [LB35]

SENATOR HARMS: Yes. Senator, really the reason why we're extending this is sometimes the weather has an impact and so they're running later and the harvest is delayed. But the problem is that we just have more people raising the beets. The beets are even larger than they used to be so it takes a longer time to process this. And so that's really what this is behind, so it extends their hauling of the beets from the farmer or from the place where they store them and then to harvest, to actually... [LB35]

SENATOR NELSON: So basically, the existing statute just doesn't provide enough time for that, it needs to be extended to the 210 days, is that correct? [LB35]

SENATOR HARMS: Yes, I talked about it earlier, Senator, that I think there was, out of the last seven years, yes, seven years, there was only one year that did not extend over 120 days and that was in '08. The rest of them have all been well over 120 days. And they're now projecting that it will be well...about 200 or over 200 days here in the very near future so. [LB35]

SENATOR NELSON: All right. Thank you, Senator Harms, I appreciate that. Would Senator Louden yield to a question or two? [LB35]

SENATOR GLOOR: Senator Louden, would you yield to a question from Senator Nelson? [LB35]

SENATOR LOUDEN: Yes, I would. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NELSON: Thank you, Senator. I'm asking you this question because you talked with quite a bit of expertise on axles. When we're talking about addition of axles, the truck comes or the semi comes with a certain number of axles,... [LB35]

SENATOR GLOOR: One minute, Senator. [LB35]

SENATOR NELSON: ...whether it's two or three or four, is that correct? Thank you. [LB35]

SENATOR LOUDEN: Well, yeah, however many you want to buy now because these semis nowadays your cattle one...triple axles are all over the place now. And they've lengthened that trailer out so that they can put the triple axle on there. But they still got to be under I think that 18,000 or 19,000 pounds of axle on there. [LB35]

SENATOR NELSON: But whether it's a double or triple axle, it's fixed, isn't it? It's not something that you can take on or off or drop down, do I understand that? [LB35]

SENATOR LOUDEN: Well, most of them are made so that when they're empty they can lift that one axle up. Yeah, there is a lot of trucks that are made like that. But nonetheless, when they go through...when they're going down the highway with a load they got to have all of them on the ground or else they'll be illegal. [LB35]

SENATOR NELSON: Depending upon the amount of load that they have, is that correct? [LB35]

SENATOR LOUDEN: Right. [LB35]

SENATOR NELSON: Yes. All right. Thank you, Senator Louden. Thank you, Mr. President. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Thank you, Senator Nelson and Senator Louden. Senator Karpisek, you are recognized. [LB35]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I will try to make this my last time to talk. Senator Harms, would you yield, please? [LB35]

SENATOR GLOOR: Senator Harms, would you yield? [LB35]

SENATOR HARMS: Yes, I will. [LB35]

SENATOR KARPISEK: Thank you, Senator Harms. Did you say that this only does the length of the truck, not the weight? [LB35]

SENATOR HARMS: I didn't say that. What I said is that it's just the time, it's the extension of the days, doesn't deal with the weight. The law, in LB35, if you actually read that, Senator, it has that all spelled out. That's all old law. All we're trying to do is extend the days. That's all spelled out very clearly in the present law that we have today. [LB35]

SENATOR KARPISEK: It is in the present law. But I thought that I heard someone, and I will get the transcript, say that this deals with length not weight. Well, Senator, current law, page 2, lines 21 and 22, can be 15 percent greater than the maximum weight, 10 percent greater than length except sugar beets, 25 percent greater length. I just want to make sure that we're saying what we mean. [LB35]

SENATOR HARMS: Yeah, I'm saying what I mean. All this deals with is the extension of the days. [LB35]

SENATOR KARPISEK: Okay, then so extension of days, so we're going to extend the days. Does going over the road more times with a heavier load not make any



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

difference? [LB35]

SENATOR HARMS: Senator, I really don't know that. All I know is what we've heard previous, an extension...widening of the...they have the number of axles that they have making them wider does seem to level that off. I'm sure there is some damage. There is damage when you drive your car, there's damage when you put salt on the highway, you pick your choice, pick any...whatever you like, there's always some wear and tear on the roads. [LB35]

SENATOR KARPISEK: Well, it just seems to me that last week I heard that the biggest problem with our roads, the biggest people who break up the roads are the semis. Did you hear that last week, Senator Harms? [LB35]

SENATOR HARMS: I did hear that, Senator. [LB35]

SENATOR KARPISEK: So it seems to me that this is part of the problem, is it not? [LB35]

SENATOR HARMS: Well, it could be. But, you know, I don't have any science that shows me that that's true that it's exactly the beet trucks that cause this damage. So if you'd be...I don't have that information. [LB35]

SENATOR KARPISEK: Well, I'm sure that it's not just the beets. I'm just concerned about running more things over the road more times and that's what breaks up the road. Now I'm not blaming the sugar beet industry, I'm not blaming any one industry. But I think we could all say that the semis are a problem. Could you agree with that, Senator Harms? [LB35]

SENATOR HARMS: I think that's probably correct, Senator. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR KARPISEK: Okay. Thank you, Senator Harms. Again, I'm not trying to defeat this bill. I'm trying to have a little fun with Senator Harms. I do think that I see a great deal of relationship between some of the industries that I try to support and when someone else tries to support someone in their area or what benefits them. I realize it is different, but it is also a lot the same. Farming, we know, is a great part of our state. I talked about that on the ethanol bill. We need it, it drives our economy. I will support this bill. I do have concerns about what we are doing to our roads and what we are charging for overweight permits, though. Thank you, Mr. President. [LB35]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) There are no additional senators in the queue. Senator Fischer, you're recognized to close on the committee amendments. Senator Fischer waives. The question is, members, shall the committee amendments to LB35 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB35]

CLERK: 34 ayes, 0 nays on adoption of committee amendments. [LB35]

SENATOR GLOOR: The amendment is adopted. Are there senators wishing to be heard on LB35? Seeing no further senators wishing to be heard, Senator Harms, you're recognized to close on LB35. [LB35]

SENATOR HARMS: Thank you, Mr. President and colleagues. I would urge you to support LB35. With the amendment it's a good bill. It simply extends the 120 days to 210, which is badly needed for the industry of sugar and that's a major thrust in our economy there. So I'd urge you to support LB35. [LB35]

SENATOR GLOOR: Thank you, Senator Harms. The question is the advancement of LB35 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB35]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

CLERK: 34 ayes, 0 nays, Mr. President, on the advancement of LB35. [LB35]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB35]

CLERK: Mr. President, LB204 is a bill by Senator Council. (Read title.) Introduced on January 7, Mr. President, at that time referred to the Education Committee for public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM659, Legislative Journal page 775.) [LB204]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Council, you're recognized to open on LB204. [LB204]

SENATOR COUNCIL: Thank you, Mr. Chairman. As declared by the Nebraska Department of Health and Human Services a few years ago, and I quote, childhood lead poisoning is the leading preventable health disease in Nebraska. Lead is a biochemical poison affecting a number of organ systems including a child's central nervous system. Elevated blood-lead levels have unequivocally been associated with reduced intelligence, academic failure, behavioral problems, and learning disabilities. Indeed, there is a direct correlation between elevated blood-lead levels in the developing child and lower IQs. According to the Centers for Disease Control, an elevated blood-lead level is defined as a level greater than 10 micrograms of lead per deciliter of blood. However, recent research indicates that the adverse affects of lead on the brain of a developing child occur at even lower levels than 10. And then blood-lead levels greater than 10 micrograms per deciliter of blood can result in more serious health effects including coma and death. While medical treatment, known as chemical chelation, is available and can be used to reduce high blood-lead levels, prevention is the desired intervention due to the fact that the damage to a child's brain caused by lead poisoning is irreversible. Most children with elevated blood-lead levels do not manifest any signs or symptoms and thus their condition goes undetected. The only way to determine if a child has an elevated blood-lead level is through a simple blood-lead screen and test.

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

Thus increasing the rates of screening for blood lead is viewed by most as one of the most effective prevention methods available. Indeed, communities across the state of Nebraska have identified the increase in blood-lead testing of children as a primary health goal. For example, the Community Action Partnership of Mid-Nebraska found that the percentage of children being tested in its 27-county area was very low. On the basis of that finding and the fact that the age of the housing stock and the percentage of children living in poverty in those 27 counties made it a suspected but undocumented area of elevated blood-lead levels. Thus, in 2007, the Community Action Partnership of Mid-Nebraska, which is based in Kearney, Nebraska, applied for and received a grant from the Environmental Protection Agency to allow them to offer free blood-lead testing to children under 6 years of age as well as to perform certain lead hazard control efforts in those children's homes. Reducing the percentage of children with elevated blood-lead levels in Adams, Clay, Nuckolls and Webster Counties has been identified as one of the priority goals of the South Heartland District Health Department. This is due in part to the fact that a high percentage of the occupied housing in that district was built before 1950. For example, 41 percent of the housing in Adams County and 62 percent of the housing in Webster County was constructed before 1950. What's so important about that date? Well, housing stock built before 1978 most assuredly had interior or exterior paint that was lead-based. Prior to 1950, that lead-base in that paint was of a greater toxicity and thus children residing in structures built before 1950 are at the greater risk of being exposed to lead poisoning. In fact, it is to be noted that as of the 2000 census, 76 percent of all Nebraska housing is built prior to 1978 and that 91,732 children age 5 and under live in housing built prior to 1979. And according to the most recent data for the Heartland District, again the Heartland District is Adams, Clay, Nuckolls and Webster Counties, 6.7 percent of the children age 0 to 6 had elevated blood-lead levels. That percentage is significantly above the national average, which is 1 percent, as well as the national healthy people goal of no children with elevated blood-lead levels. Douglas County is yet another example where the screening of children under age 6 is an issue. It has been determined that, notwithstanding extensive outreach to physicians, only 33 percent of the Medicaid children in Douglas County, those who are at greatest

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

risk of exposure to lead poisoning, Medicaid children, are being screened for lead poisoning. Allow me to place these facts in context. The pages have distributed to each of you a map prepared by the Department of Health and Human Services which shows the number of children under age 7 who were tested for lead in each county during 2010. That number appears on the left, if you look at any county within your district. That map also shows the number of children whose blood-lead levels were greater than 10 micrograms per deciliter, which is the number that you'll see on the right. Since I had a brief conversation with Senator Heidemann about this subject, I would like to direct your attention to the counties in his district, those are Otoe, Johnson, Nemaha, Pawnee, and Richardson. For example, in Otoe County there were 161 children under age 7 who were tested for lead, and 1 of those children had a lead level greater than 10. What the map does not show you is how many of the children who were tested had lead levels close to 10, either between 5 and 10 or 2 and 4. In Otoe County, of the 161 children under age 7 who were tested for lead, 30 of those children had blood-lead levels between 5 and 9 micrograms per deciliter. What that means is under current medical research those children have been lead poisoned to an extent and they are at risk of developmental brain issues. I would now like to direct your attention to the second handout, which is taken directly from the Department of Health and Human Services Medicaid guidelines. Item 4, entitled lead toxicity, states and I quote, all children ages 6 to 72 months of age are considered at risk for lead poisoning and must be assessed at the screening exam. Clearly, from the data I have earlier shared with you, this is not occurring and provides much of the reason for my introduction of LB204. LB204 provides a means to ensure that all children in Nebraska are screened for lead during that critical and vulnerable age, which is between ages 6 months and 72 months. Under current law, all children entering kindergarten must present evidence of particular immunizations having been administered. These immunizations are administered during well-baby exams. These exams are commonly referred to by the acronym EPSDT, which stands for Early and Periodic Screening, Diagnosis and Treatment. Blood-lead screens and blood-lead testing, if necessary, are supposed to also occur during the EPSDT. LB204 simply adds a requirement... [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: One minute, Senator. [LB204]

SENATOR COUNCIL: ...that a blood-lead screen be provided along with the proof of the immunization required when enrolling a child in kindergarten. I have coupled it to immunizations, not because blood lead poisoning is a communicable disease which we're trying to prevent, but that blood lead does have an effect on a child's ability to learn. And that's information that parents and schools should have before children enroll in kindergarten. There is an amendment to the bill that I will discuss after the amendment has been introduced. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. As the Clerk stated, there are amendments from the Education Committee. Senator Adams, as Chair of the committee, you're recognized to open on those amendments. [LB204]

SENATOR ADAMS: Thank you, Mr. President. The committee amendment, in effect, does three things. First of all, and Senator Council I think is fully intending to follow-up on this particular item, the fiscal note of \$51,273 it would transfer from the Health Care Cash Fund to HHS. And I think Senator Council has further language to go along with that to create a kind of reimbursement. The second part of the committee amendment simply removes private, parochial and exempt school students from the screening. And the third portion of the committee amendment is a matter of language clarification, that is the intent is that if a child tests above that level then HHS will notify the parents, they'll notify the parents. And what they're in effect going to do is to notify the parents that their child "may," "may" be eligible for special ed services under other health impaired. But that's going to require additional assessment before that happens, it's not an automatic. And this committee amendment language clarifies that. That's the amendment, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Adams. Mr. Clerk. [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

CLERK: Mr. President, Senator Council would move to amend the committee amendments with AM938. (Legislative Journal page 944.) [LB204]

SENATOR GLOOR: Senator Council, you're recognized to open on your amendment. [LB204]

SENATOR COUNCIL: Yes, and thank you, Mr. President. And what I will do is just continue briefly with the issues regarding the fiscal note and it will also put into context the amendment that I have filed. I want to begin at this point, though, by thanking my colleagues on the Education Committee for their unanimous vote to advance LB204. And I want the body to know, while there was no opposition to the bill at the hearing, the bill did receive a full and fair hearing, in fact this was the second hearing that this bill has received because I introduced the same legislation last session and it didn't make it to General File. While there was no opposition at the hearing, I have since heard some concerns, which I want to address at this time along with the fiscal note. The \$51,000 fiscal note is provided by the Department of Health and Human Services and it's based on an assumption. And the assumption is that medical personnel will not sign a statement allowing children to opt out of having the actual blood-lead test. And so you'll know, the actual blood-lead test is a finger prick. The cost associated with the blood-lead test is the actual laboratory fee for testing the blood, which is estimated at about \$17 a test. But wherever legislation like LB204 has been enacted, the cost of those laboratory fees go down because blood-lead testing goes up. LB204 was patterned after an Iowa law that was enacted, I believe, it was in 2007 that contains the same requirement. And since the bill...prior to the enactment of a similar bill in Iowa, only 70 percent of children under age 5 were being tested for blood lead. Since the enactment of that bill in Iowa, more than 95 percent of all children in the state of Iowa are being tested or blood lead. And that's the objective of LB204, to make sure that these children are being screened. The \$51,000 is based on the assumption that as the bill provides, in the bill there is an opt out provision for having to test a child for blood

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

lead. And that opt out provision is based on recognized and accepted methods of determining whether a child is at low risk of blood lead poisoning. I direct your attention to the second document that was handed out to you and that is taken directly from the Department of Health and Human Services Medicaid guidelines. If you look at item 4, it says, lead toxicity screening. And it sets out a series of questions, they are called the risk assessment questions. And this is what a medical provider is supposed to be administering during these EPSDTs. And if you look down, it contains nine questions. And according to the Department of Health and Human Services, if the answer to all nine of those questions are negative, a child is considered at low risk for high doses of lead exposure but nevertheless is supposed to receive a blood-lead test at 12 months of age and, if possible, at 24 months of age. If the answer to any one of those questions is positive, a child is considered at high risk of blood lead poisoning and a test must be administered immediately and at every subsequent screening. If you look at LB204, it contains the same lead screening type of questionnaire. In fact, it contains one less question than DHHS's current guidelines require. And all that LB204 requires is that if a physician is not administering a blood-lead test, that he or she just sign a statement to that fact and that is verification that they have administered the blood-lead screen, which again, ladies and gentlemen, I repeat, under current Medicaid guidelines those physicians are supposed to currently be doing. So if a child, a Medicaid child does not receive a blood-lead test during his or her well-baby exam, then that test is not occurring because that physician has made a determination or supposedly has made a determination that that child is not at risk of blood lead poisoning. DHHS believes that with the passage of LB204 physicians who currently aren't required to present any evidence as to why they're not administering a blood-lead test, that physicians will not want to sign a statement that says they've administered the screen and the child is not at high risk of blood lead poisoning, that instead they will administer the blood-lead test to each and every Medicaid child, which then results in the \$51,000 fiscal note. I submit to you, ladies and gentlemen, that DHHS should be currently operating under that assumption. They should be currently operating on the assumption that every Medicaid child under age 5 is going to have to be administered a blood-lead test. What the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

amendment does and a subsequent amendment to the fiscal note does is to provide for the Department of Health and Human Services to have access to the Health Care Cash Fund on a reimbursement basis. So as they expend additional money to test more children, they can draw down that expense from the Health Care Cash Fund. It's not a direct appropriation. One of the other concerns that was expressed after the bill was heard and after the committee voted to advance it, was something, and it's an error on my part that should have been corrected at the committee amendment phase, was the effective date of this legislation. This...as originally drafted, the bill would go into effect July of this year, which would mean that children entering kindergarten in September would have to be in compliance with the lead screening. Some school districts have expressed concern that that's too short a time period to enable them to get notification to parents so that they're prepared to properly enroll their children. So the amendment, my amendment provides for a change in the effective date so that it's beginning with the school year that begins September 2012 that children enrolling in kindergarten will have to meet this requirement. The third concern that has been expressed to me recently has to do with a perceived burden on school districts. Well, the fact is that with the amendment, the committee amendment, it removes this requirement for the information being sent to school personnel. And all that a school district is required to do is to ensure that a child entering kindergarten has been properly immunized and has had a blood-lead test, that's it. There's no additional burden on school districts. And in fact, one of the things that I think school districts should be embracing about LB204 is that if a child does have an elevated blood-lead level and the school districts are placed on notice of this fact before a child enters kindergarten, they're in a position to provide better intervention for that child academically. So in terms of any concerns that any of you may have received directly from constituents, again I have received no oppositional statements from anyone except the school district that did note the effective date, and that is corrected by the amendment that I have filed, which is AM938, to AM659. It pushes back the effective date to next school year, 2012 school year, not the 2011 school year. So I believe that the amendments address the concern,... [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: I believe, that the fiscal impact is minimal and perhaps will not be that full amount if the screen shows that the child doesn't need a blood-lead test, which is what should be occurring right now, colleagues. And that's one of the points I want to emphasize is that that analysis should be occurring right now, that assessment should be occurring right now. So with that, I would urge your support of AM938, the committee amendment, AM659 and ultimately LB204 to provide more assurance that our young people will be entering school prepared and able to learn. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Members, you've heard the opening on the bill, the committee amendment, and the amendment to the committee amendments. Senators wishing to be heard are Nordquist, Fischer, Loudon, Pahls, Nelson, and Ken Haar. Senator Nordquist, you're recognized. [LB204]

SENATOR NORDQUIST: Thank you, Mr. President and members. I rise in strong support of LB204 and the package of amendments. Senator Council really has been a leader on this issue statewide and certainly in the Omaha community that's been impacted, that's children has been impacted by lead, and I want to thank her for bringing this important issue forward and certainly it's absolutely timely. Its time has come. We know this issue is the number one preventable environmental disease that impacts kids and many of those kids aren't showing the signs of being affected by it, but, unfortunately, it impacts their lives, their educational outcomes, and ultimately their success. And early identification is the number one, the number one key that we need to do and LB204 puts us on a pathway to doing that. I've received some information from the Douglas County Health Department which talks about some of the...they did a...pulled some data between 2004 and 2009 of targeted zip codes in east Omaha that have been impacted by lead and certainly the numbers are pretty startling. Between Senator Council's district and mine and maybe a few other areas over that time period, from '04 to '09, there's been hundreds of kids with elevated blood-lead levels and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

including a number of kids that have been way beyond the 10 micrograms per deciliter level and upwards of 40 to 60 micrograms per deciliter, which goes beyond. Just at 10 you can see...start to see learning disabilities, developmental problems, lower IQ, hypertension, behavioral problems, and dental problems; at 20 there's nerve problems and slower reflexes; at 40 you see anemia; at 60 you see kidney damage and stomachaches. This is what's happening to kids in our communities but, as Senator Council said, we're not testing enough. I think the stat she said was somewhere around 30-some percent of Medicaid population is only getting tested. If we look at the numbers here, we've been seeing an increase, thankfully, of the numbers tested but we're not...we're not to the point that we need to be and I think LB204 puts us on that. And ultimately, the state very much so has a vested interest in this. We're talking \$17 a test. As Senator Council said, that number is likely to come down as we increase the quantity of tests performed, but our interest certainly is ensuring that these kids have a productive life, are successful, we put them on the right path to achieve educational success and to live out their full potential, and this bill will certainly save us money in the long run. The dollars up-front are minimal compared to the dollars lost from the potential of these kids. So I encourage you to support LB204 and the amendments, and again I thank Senator Council for leading on this very critical issue. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Nordquist. Senator Fischer, you're recognized. [LB204]

SENATOR FISCHER: Thank you, Mr. President and members. I certainly appreciate Senator Council introducing this bill and the concern she has for children, not just in her district but across the state that may be affected by it, but I, too, have concerns about this bill and I have those concerns after hearing from some RNs from across the state and also school nurses within my legislative district. I'm going to present some of those and then give the rest of my time to Senator Council to respond to them, if I may. First of all, I have been told that lead testing is not recommended for every child and it is not recommended by the American Academy of Pediatrics and it is not recommended by

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

the Centers for Disease Control. When lead testing is recommended, it should be done approximately between the ages of 18 months and 4 years. If that is the case, I would think that this bill does not address the true need that we see for these children to be tested. It should be done much earlier. Senator Council mentioned the well-baby program and the exams that are required there, and I guess I would ask why is that required, first of all. I'm ignorant of that program. Is it required in that program that the Medicaid recipients, when they bring their babies in, do they need to be tested, because it seems to me that's the time it should be done, by the information that I've received from this. On the amendment, I see that it exempts private schools. I know sometimes we do things for political reasons, but I would question, aren't those children also important to all of us? If we're going to require it of public schools, that they do this, and we're saying that we're having this done in order to protect children, shouldn't we protect all the children in the state if we're doing this mandate? On the opt out, I believe Senator Council said we had 95 percent that participated in the program in Iowa, if I heard that correctly. I don't know. But if she could address that on the opt out, how many do you think would opt out? And my fourth point or fifth or sixth, I don't know where I am by now, Senator Council, but does your amendment, does it just require it for the at-risk children in this, for all children with public schools? Maybe we should just require it for at risk and, if so, if you would maybe define how those at-risk children would be identified. With that, I would yield the rest of my time to Senator Council, Mr. President. [LB204]

SENATOR GLOOR: One minute thirty-eight seconds, Senator Council. [LB204]

SENATOR COUNCIL: And thank you, Senator Fischer. I'm going to be unable to address all of your questions in such a short time period but, first and foremost, the determination of whether a child is at risk of lead poisoning is dependent upon responses to a lead screen and those are the questions that are set forth in the bill which are most identical to the questions set forth in current Medicaid guidelines. And I need to point out there's a difference between a lead screen and a lead test. A lead screen is the process of asking those questions and if there's a positive response...

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

[LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...to any of those questions, a child is considered to be at high risk of lead poisoning. If there is not one positive response, they're at low risk of lead poisoning. And under...and that's where the issue about CDC...correct, not all children are at high risk of lead poisoning, but if any of those indicators are present, that child is considered at risk of lead poisoning. Now the bill says have that...have evidence that the lead test...the child has been screened for lead at some time between the exact ages, 18 months and 48 months, and that's because those are the vulnerable...in fact, the most vulnerable time is 12 to 24 months, which is when children increase their hand-to-mouth activities, because that's how they ingest lead, is they get it on their fingertips. It's dust-like at that point in time and they put it in their mouths and that's how it's ingested. So the bill traps... [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council, Senator Fischer. Senator Louden, you're recognized. [LB204]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. This is a very serious matter because lead poisoning then leads to mental retardation if it's in high enough levels, and I think we've been discussing that for, I know, nearly 40 years, because when I look at the handout that Senator Council sent around about does your...do you live near a heavily traveled major highway or soil and dust, well, that's the reason we have unleaded gas now is because of the lead content that was in gasoline that was going along those freeways. I was in Wisconsin I think in 1977 and that was

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

their issue then. They were testing the dirt along those highways for the amount of lead in the dirt and that was in 1977, because of the fact that they were having problems with lead. And also I think in Omaha with that area down there on next to the river down there, Arco or whoever that battery manufacturing was, they finally just covered that all over with dirt and made a park out of it because the lead was so bad in there. So it is a serious matter. What I do question, though, is when I look at the handout that Senator Council sent around at the percentage of kids in various areas that tested for higher levels of blood (sic), and there's a lot of that country that has zero in the numbers tested. Most of them, and I think maybe Douglas County is about the highest with 2.5 percent of the tested showed up with blood level. And when we passed legislation to require all of the school districts to do this, that means everybody in the state of Nebraska. So I think we have a huge area out there that it's probably isn't necessary and it's all going to cost somebody some money. Now whether you have lead screening, it requires school districts to do lead screening, that's something else, because they can ask the questions and then they would be testing the child to see whether or not there's a chance that they have to go further for the amount of lead in there. The next thing is, is after we find this information out, what are we doing with it? Just to go in there and say, well, then we would arrange for them to have different classes if their blood-lead level was higher isn't exactly a solution to the problem. Myself, if we're going to collect all this information, I think we need to have a better method of what we're going to do with the information afterwards. If it's high enough to risk their health, then that should be taken up on a health issue someplace along the line and some other type of legislation should come along to do something about these children, especially if they go into special ed and if that's the reason they are in special ed is because of the high blood (sic) levels. I...as we look at the amendment to the bill and we ask when they have to be in there, at what age, and when they start to school and stuff like that, I don't know if this exactly addresses the issue that we're looking at. Part of that blood testing will have to be done by the parents, if they can afford it. We've already set it up now these kids have to be vaccinated before they get into kindergarten, if they can afford it. That went in, too, several years ago. There's also a part in there that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

if it's against your religion, you don't have to do it. So when I was on the school board, that's been many years back, we started out with this, that kids had to be vaccinated when they were in school, and we had people right out in those rural areas who decided they didn't want to do it so they just said it was against their religion and there wasn't much you could do about it. So I think it's...I admire Senator Council for bringing this issue up because it is a serious issue, but I don't know if we're addressing it as well as we should be here. I would like to see something brought forward that perhaps they could do screening... [LB204]

SENATOR GLOOR: One minute, Senator. [LB204]

SENATOR LOUDEN: ...for the districts around. But I think then after we did the screening and found out what the blood toxicity was, the lead toxicity was, then we need to work on a little bit different angle than what we have going here in this bill. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Louden. Senator Pahls, you're recognized. [LB204]

SENATOR PAHLS: Thank you, Mr. President, members of the body. I find it interesting that we do...all of a sudden the opponents are coming out and saying we question this bill and last week a major bill, there were really very few opponents and they said, well, if there aren't any opponents, apparently it didn't matter. It's really interesting how we can shift our opinions depending on what bill that we're dealing with, but as I read my gadget here, it said there were no opponents to this particular bill. I could be reading it wrong but that's what I see. As I said, last week we discussed a major bill and it was brought up there were no opponents, so why all of a sudden is there a big, what I call, scare tactics? Legitimate questions. I would like to call on Senator Council for a question or two if possible. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes, sir. [LB204]

SENATOR PAHLS: Senator, I'm doing this just for clarification and I'm going to put you back a few years and I'll put myself back a few years. Let's say that you are a parent with a child who has...you found out that they have this blood problem, and I'm the school administrator. I'm going to give you a form and you're going to fill out about all of the health...like whether they've had their shots, etcetera, etcetera. Will you also fill out on a form telling me that your child has this blood...had this blood test if this bill passes? [LB204]

SENATOR COUNCIL: And if I can clarify, Senator Pahls, under current law when you come to enroll your child in school for the first time... [LB204]

SENATOR PAHLS: Right. [LB204]

SENATOR COUNCIL: ...before they enter kindergarten, you are to provide evidence that that child has had certain immunizations. [LB204]

SENATOR PAHLS: Right. [LB204]

SENATOR COUNCIL: All LB204 does is add a requirement that when you present the immunization record you also present evidence that the child has had a blood-lead screen and, if necessary, a blood-lead test. The results of that test are provided to the Department of Health and Human Services, not to the schools. [LB204]

SENATOR PAHLS: Okay. And I understand why you're going with that because that is private information. See, my concern that, as an administrator, I would not know. I mean I understand the test was taken, but I don't know the results of that. Would I only find out



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

that if...let's say that you child had some developmental needs. Is that when I would expect you...or could I say I see that your child had this test, are you willing to give me that information? When do I see that to help your child out? [LB204]

SENATOR COUNCIL: Okay. And under the bill as it's written, the onus is on the parent to make...first of all, the onus is on DHHS to let that parent know that that child is potentially eligible for early education services under the special education program, and then the responsibility would be on the parent if their child has tested with a high blood-lead level, to let school officials know that. Because if the child isn't eligible for special education services, the school district should be placed on notice by the parent--the HHS can't do that because of HIPAA--... [LB204]

SENATOR PAHLS: Right. [LB204]

SENATOR COUNCIL: ...but for that parent then to let the school know that their child has an elevated blood-lead level and they should be made aware of that in terms of providing educational program opportunity for that youngster. [LB204]

SENATOR PAHLS: Okay. Let's say, though, that we're looking at your child and I know nothing about the test, the level of lead in your child's body, would it be a fair question, once I see the health form, for me to say would you share that with me? [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR PAHLS: You're not obligated. [LB204]

SENATOR COUNCIL: Sure. I mean there's nothing that prevents a parent from sharing that medical information,... [LB204]

SENATOR PAHLS: Right. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: ...because inherent in them sharing the information is consent to release it. But there's nothing that prevents the parent to say...in fact, I would encourage parents to do that because the current medical research shows that while the level now is ten, all of the medical research shows that there is damaging, irreversible brain...developmental brain issues when a child has any lead in their blood. And so if a child tests, and that's why I showed you the sheet,... [LB204]

SENATOR PAHLS: Right. [LB204]

SENATOR COUNCIL: ...if a child tests between five and nine, they're at risk of having experienced some developmental brain damage. [LB204]

SENATOR PAHLS: Okay. Then let's turn this around then. As a school administrator, because one person doesn't make the decision whether your child receives any additional help services, would it be a fair question for me... [LB204]

SENATOR GLOOR: Time, Senators. [LB204]

SENATOR COUNCIL: Time. [LB204]

SENATOR PAHLS: Thank you. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senators Pahls and Council. (Visitors introduced.) Senator Nelson, you're recognized. [LB204]

SENATOR NELSON: Thank you, Mr. President, members of the body. I was otherwise occupied when Senator Pahls was asking (inaudible) question. I don't want to be

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

repetitive but I do have some questions for Senator Council, if she would yield. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR NELSON: Thank you, Senator. I think I heard you say that once the lead poisoning is detected in a child, it's irreversible. Is that what you said? [LB204]

SENATOR COUNCIL: The damage to the brain is irreversible, yes. [LB204]

SENATOR NELSON: Okay. So it's...so then we really aren't talking about a cure here. We're just talking about intervention. Is that it? [LB204]

SENATOR COUNCIL: We're talking about prevention and intervention. [LB204]

SENATOR NELSON: Prevention. How would we prevent then? [LB204]

SENATOR COUNCIL: Well, information, Senator. Once parents know that their child is going to need to provide evidence of blood-lead testing before they enter kindergarten, once that becomes wide knowledge then parents will begin to start inquiring into issues surrounding blood-lead poisoning. And what the hope is, is that as we raise the consciousness level of people about blood-lead testing, they'll go out and seek the information. And in a vast majority of the counties in this state, county health departments have blood-lead poisoning teams or divisions which can provide those families with information so that they can remediate. The fact that one child in the household has an elevated blood-lead level, action can be taken to prevent subsequent children in that household from being lead poisoned. So if I've got a six-month-old and a four-year-old, and the four-year-old is being tested so they can enter kindergarten and you find out that they have an elevated blood-lead level, then that family will be provided

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

with information on how they can prevent that six-month-old from suffering that same fate. [LB204]

SENATOR NELSON: So we're talking about homes which have lead paint and where there might be chips and things of that sort that... [LB204]

SENATOR COUNCIL: Absolutely. [LB204]

SENATOR NELSON: ...probably that the child is ingesting. [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR NELSON: All right. In this sheet that you provided here, it talks about the...I guess you'd say the Mantoux test, who is the screening provider that that refers to? Who does this screening? [LB204]

SENATOR COUNCIL: Okay, which...what phase of the document (inaudible)? [LB204]

SENATOR NELSON: That's number 4 there and it says, "Beginning at six months of age and at each visit thereafter the screening provider must assess the child's risk for exposure." [LB204]

SENATOR COUNCIL: That's the medical provider, the physician. [LB204]

SENATOR NELSON: That's the physician. [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR NELSON: And this is part of the \$17 cost then for the lab tests? There must be something more if you're going to have a physician involved. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: What happens is that EPSDT, the Medicaid provider, they receive a flat rate from DHHS for performing each of these well-baby exams and that is to cover every aspect of a well-baby exam. So while a physician may not be doing the finger poke, inherent in the reimbursement rate is some minuscule percentage for doing that. The only charge is...or direct charge is for the lab test, which is the \$17. [LB204]

SENATOR NELSON: All right. And that money is to come out of the healthcare on a reimbursable basis, that \$17. [LB204]

SENATOR COUNCIL: On a reimbursable basis, yes. [LB204]

SENATOR NELSON: Well, what about the kids that...the young children that are not on Medicaid that the parents are going to have to have them tested? Then they're going to be paying for that physician to do this test or this screening and ask those questions? [LB204]

SENATOR COUNCIL: Yes. And that's why, Senator Nelson, that's the exact reason I tried to couple it, it coupled with immunizations. That family is going to have to have a physician's visit. [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: Their child is going to have to have an exam because they have to have the immunizations before they enter kindergarten. So all LB204 is doing is saying, physician, when you're going through that exam and you're doing the immunizations, add the finger poke if necessary and the corresponding lab test, and that's all it does. And in terms of people who aren't Medicaid eligible, in almost every county in this state the county health department will provide those lead...blood-lead tests for families who can't afford it. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NELSON: All right. Thank you. Very quickly, Senator Fischer said there was a suggestion that this testing should be done at an earlier age. That wouldn't be true of the inoculation then. So we've got two different time frames here,... [LB204]

SENATOR COUNCIL: Pardon? [LB204]

SENATOR NELSON: ...if I understood. And maybe you might want to address that the next time you speak, whether it's better to do this lead testing at a much earlier age than at four years of age. [LB204]

SENATOR GLOOR: Time, Senators. [LB204]

SENATOR NELSON: Thank you, Senator. [LB204]

SENATOR GLOOR: Thank you, Senator Nelson and Senator Council. Mr. Clerk. [LB204]

CLERK: Mr. President, your Committee on Education, chaired by Senator Adams, reports LB235 to General File with committee amendments. Revenue Committee, chaired by Senator Cornett, reports LB384 to General File with committee amendments. Senator Loudon has an amendment to LB106 to be printed and to LB84. And a Reference report referring LR141 to standing committee for public hearing. Senator Wallman would like to add his name to LB152. (Legislative Journal pages 974-978.) [LB235 LB384 LB106 LB84 LB152]

And, Mr. President, a priority motion: Senator Bloomfield would move to recess the body until 1:30 p.m.

SENATOR GLOOR: Members, you have heard the motion to recess until 1:30 today. All

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

in favor say aye. All opposed, nay. We are recessed.

RECESS

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

SENATOR GLOOR: Thank you. Mr. Clerk, do you have any items for the record?

CLERK: I do, Mr. President. Enrollment and Review reports LB90A and LB35 to Select File. And I have notice of hearing with respect to LB141 from the Government Committee. That's all that I have, Mr. President. (Legislative Journal page 979.) [LB90A LB35]

SENATOR GLOOR: Thank you, Mr. Clerk. Members, we'll proceed back to General File, LB204, committee amendment AM659 and AM938. Chair recognizes Senator Ken Haar. (Legislative Journal page 944.) [LB204]

SENATOR HAAR: Mr. President, members of the body, first of all, I want to thank Senator Council for bringing this bill forward. And it's very interesting. Senator Loudon talked about the lead along the Interstate. And your map, Senator Council, seems to go right along the Interstate, doesn't it? I, just for the heck of it, I brought up some counties to show the percent of children that were tested that tested positive. And we start, of course, with Douglas which is about 1.13 percent. And then I just picked some for random and I was really surprised. In Jefferson County, 3 out of 53 is 5.50 percent,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

that's way above Douglas County; Furnas was about 5 percent; Box Butte 2.50 percent; Cass County 2 percent; Hall almost 2 percent; Lancaster .6 percent; Scotts Bluff .3 percent. So again, this was just random numbers that I picked. But it looks like this is not simply an Omaha problem. I'd like to ask Senator Council some questions. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes, sir. [LB204]

SENATOR HAAR: Did I draw a correct conclusion with... [LB204]

SENATOR COUNCIL: You did indeed draw a correct conclusion, Senator Haar. And you know, one of the issues about the percentages of elevated blood-lead levels is 10 micrograms per deciliter or higher. What the data doesn't show is the number of those children who test between 5 and 9, which is also a dangerously high level. But at this point in time, CDC has set the danger level at 10. So those percentages could be even greater, that's the point I'm making. [LB204]

SENATOR HAAR: Okay. Well, again, looking at...and again, just doing a sample, a little bit of a sampling here of what percent came from each county, this is not just an Omaha area problem. And it's such a treatable sort of...maybe you can't reverse the damage, but you can prevent it from going further. Our children deserve this. And I thank you, Senator Council, for bringing this forward. [LB204]

SENATOR GLOOR: Thank you, Senator Haar. Senators wishing to be heard are: Lautenbaugh, Fulton, Howard, Pirsch, and Karpisek. Senator Lautenbaugh, you are recognized. [LB204]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I'm wondering if Senator Council would yield to a question or two. [LB204]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes, sir. [LB204]

SENATOR LAUTENBAUGH: Thank you, Senator. In reading the amendments to the bill, I'm on page 4, paragraphs...or lines 5 through 16, really, in that paragraph. It appears to specify or create a duty for the schools to notify people of this requirement for the testing. Is that your understanding? [LB204]

SENATOR COUNCIL: And you're on the amendment or the green copy of the bill? [LB204]

SENATOR LAUTENBAUGH: Of the amendment, I'm sorry. [LB204]

SENATOR COUNCIL: Hold on. [LB204]

SENATOR LAUTENBAUGH: Where it says, each school district shall make diligent efforts to inform families prior to the date of school registration. [LB204]

SENATOR COUNCIL: Yes, and that's the intent. And because...and it doesn't add a burden to the schools, Senator, because they are required to provide them information about immunization prior to their involvement in school. And that's why I targeted the immunization statute because these are things that the schools are currently doing about immunizations. And so all they would be doing is adding to the information they're giving parents about immunization but that that doctor's visit should include a blood-lead test. [LB204]

SENATOR LAUTENBAUGH: Is it inconsistent to say that if this was supposed to have been done before the child turned 4...what is the purpose of this...a kid is starting school

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

at 5 and the school district doesn't know about them before that, are they notifying them to say that's something they should have done by the time they were 4? [LB204]

SENATOR COUNCIL: Okay, and it's my understanding, Senator Lautenbaugh, that the school districts start notifying families who have children who are going to be enrolling in kindergarten earlier than that age. But even if they're notifying them at that age, at age 4, for example, still they have the opportunity to get the test done at age 4. [LB204]

SENATOR LAUTENBAUGH: And...but how does the school know the kids are out there before they register? [LB204]

SENATOR COUNCIL: Well, and that's...when they're coming in to register they would have already known...they get information, don't ask me exactly how they get it, but the...and the medical providers provide it to the families, too, during these well-baby exams that these are the things that your child is going to need in order to enroll in kindergarten. So families know about the requirements on the immunization side long before they enroll their children in school. [LB204]

SENATOR LAUTENBAUGH: Is there a way...it appears what we're trying to do is basically make these tests mandatory for kids. Is there a way just to make them mandatory without involving the school monitoring it in any way? [LB204]

SENATOR COUNCIL: Well, you know, Senator Lautenbaugh, I'd be happy to sit down and try to work out a way to accomplish that. But you're absolutely correct. My intent is to ensure that all children have a blood-lead screen and test before age 5. And by tying it into the immunizations it was my effort to eliminate any concern that it required an additional physical exam and the corresponding costs associated with that. There is a series of immunizations, there's an immunization schedule that most medical providers provide to a parent of an infant that lets them know these are the immunizations your child is going to require and at what time period. So I thought by tying it into the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

immunization it would be a part of a scheduled visit. [LB204]

SENATOR GLOOR: One minute, Senators. [LB204]

SENATOR COUNCIL: The family wouldn't incur any additional costs and it would link into the education of the children by letting them know that if they had the blood-lead test performed, like, at age 24 months, for example, if they have it done at 24 months and they find out that their child is lead-poisoned they are eligible for early childhood special education services at age 24 months. [LB204]

SENATOR LAUTENBAUGH: Okay, thank you, Senator. And I'm listening to the debate on this and trying to decide where to come down because I frequently avoid trying to add additional duties and requirements to the schools. While this doesn't seem to be doing that necessarily, I'm a little troubled that we're involving them just as a convenience as I don't see this as something communicable, which I think the other immunization items tend to be related to. So I'm struggling with how to reconcile this. But I'm listening and I thank you for your responses, Senator Council. [LB204]

SENATOR GLOOR: Thank you, Senator Lautenbaugh. Chair recognizes Senator Fulton. [LB204]

SENATOR FULTON: Thank you, Mr. President, members of the body. I think I'm probably in Senator Lautenbaugh's category, I want to hear more of the debate. When Senator Council described this to me originally it made a lot of sense to me. And it still does, so I just have some questions. So let's see, one, two. Would Senator Council yield to a question? [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR FULTON: Okay, a couple questions for you, Senator, then I'm going to yield you some time here when I get done here. Can you educate me on what other tests are, how do I say this? There's going to be a blood draw from the child. Are there other tests already required by law that require a blood test? [LB204]

SENATOR COUNCIL: I don't know that require a blood draw, but certainly involves needles. [LB204]

SENATOR FULTON: Okay. I guess, where I'm going with this is if I'm going to...is this something new that...so I have little kids and we got to take them in and they're going to have to get a...have some blood taken from them. If they're already going to have to do that, then this becomes a little bit more palatable, whereas if this is something new. So... [LB204]

SENATOR COUNCIL: Can I... [LB204]

SENATOR FULTON: Yeah. [LB204]

SENATOR COUNCIL: ...elaborate a little further. What we're talking about, Senator Fulton, is what's commonly referred to as a finger poke. When you're talking about a blood draw we're talking about a finger poke and they get enough blood in the finger poke to send to the lab to test for the presence of lead. We're not talking about intravenous, you know,... [LB204]

SENATOR FULTON: Okay. [LB204]

SENATOR COUNCIL: ...we're talking about...and in fact many of the blood-lead screenings that occur today, at no cost to families, are provided at health fairs. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR FULTON: Okay, okay, that's very helpful. If I missed that earlier, I apologize. Secondly, Senator, the Health Care Cash Fund, I asked you off the microphone, this is something that I'd like to have in the record, so if this passes, down the road we have something to look back to. The Health Care Cash Fund, any time we take monies out of that there has to be some concern over whether indeed we're challenging the solvency of that fund in the long term. Could you take a moment to explain, you know, the amount of money and that indeed this is going to remain solvent, the Health Care Cash Fund. [LB204]

SENATOR COUNCIL: Yes. And thank you for the opportunity, Senator Fulton. That's one of the reasons when you see there is an amendment to the A bill that will follow, and it changes it from an appropriation to a reimbursement. Instead of, as the current A...the original A bill was drafted it would just appropriate, it would just transfer \$51,000 into the General Fund that would then be appropriated to Health and Human Services. The amendment of the A bill changes it to a reimbursement. And so as the Department of Health and Human Services incurs these additional costs, they would go to the Health Care Cash Fund. And I was advised that the solvency of the Health Care Cash Fund is not near being threatened by the possibility of \$51,000 in reimbursements on an annual basis. [LB204]

SENATOR FULTON: Okay. Thank you, Senator. This last point I'm going to make, I'm going to make it and I don't know where it fits in the amendment or in the amendments, AM938, AM659 or LB204, but it certainly has something to do with all three of them. As I was reading through the fiscal note the other night, trying to back through the rationale by which a fiscal note exists, something struck me. And I wonder how many folks, I've done my own little informal survey among colleagues here and I think this is something that should strike all of us. I was not aware that approximately 44 percent of total student membership is eligible for Medicaid or the CHIP program. [LB204]

SENATOR GLOOR: One minute. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR FULTON: Now that may well be common knowledge, but it just...that...we're approaching half. So maybe I've been asleep at the switch, maybe I need to pay closer attention. But it just strikes me as something incredible that almost half of our children in this state are qualifiers for Medicaid or CHIP. This is something we have to have a handle on because obviously the state has some responsibility here. So either we have a lot of poor families or we have Medicaid and the hurdle for Medicaid and CHIP is too low and too many people are qualifying for it. Now I don't know which one of those two it is, but 44 percent just strikes me ostensibly as being awfully high. So I didn't know any other place to put this in, it's something that I felt I needed to comment on. If there's any time, I'd yield it to Senator Council. Sorry. [LB204]

SENATOR GLOOR: There are 2 seconds left, sorry, Senator Council. (Laughter) Thank you, Senator Fulton. Senator Howard, you are recognized. [LB204]

SENATOR HOWARD: Thank you, Mr. President and members of the body. When Senator Loudon spoke earlier, he brought up a very legitimate concern. And frankly, it's the same concern that I had a year ago when we heard this bill in the Education Committee. And that is when you get the information, after the child is tested, what do you do with it? Now you can tell the parents to let them know that the child is at risk or has an elevated blood level and there's a concern. But if the parent is in a situation, whether they're living...is such that they are not able to change that, that information really isn't going to do any good. I saw many families living in Omaha, living in my district and prior to that when I worked for Health and Human Services as a case manager, many, many families living in older homes, sometimes multiple generations of families living in an older home, a family home. And if there's any damage to the paint in that older home, if that's been disturbed and that paint is chipped and that little child has a habit of putting things in their mouth, you've got a real risk there. But what do you do about it? The child was seen. The blood level is taken, it's found to be problematic, the school can know and adjust accordingly. But what about the home environment? This is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

what troubled me a year ago. I voted to bring this bill out on the floor because I felt it needed to be discussed. But I will say to you if we don't have a means to assist the family, to address what's actually happening in the home, we're not really getting ahead. Now Omaha is fortunate in that it does have a lead abatement program. It's unfortunate in that the amount of lead in the dirt has to be quite high in order for the house to be eligible, the home and the yard to be eligible for the treatment program. Now I'm wondering if other areas in the state have a lead abatement program. And if Senator Harms would yield to a question, I would like to ask him. [LB204]

SENATOR GLOOR: Senator Harms, would you yield? [LB204]

SENATOR HARMS: Yes, I will. [LB204]

SENATOR HOWARD: Thank you, Senator Harms. In looking at the map, I see that Scotts Bluff is colored in a dark, dark blue. And that indicates the number of children tested and that there was some concern regarding the lead issue there. Do you know if Scotts Bluff or the area that you represent does have any sort of lead abatement program for the soil? [LB204]

SENATOR HARMS: You know, I don't know what the answer to that question is. I do know when we look at the lead content, Senator, we have a lot of homes that are extremely old in western Nebraska. And that might very well be the issue. We also have a fairly large number of children that come from low-income families. And I would guess if we could trace that back, we would find that there's a relationship to this. [LB204]

SENATOR HOWARD: I would guess that you are probably very correct in that. Thank you. [LB204]

SENATOR HARMS: You're welcome. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR HOWARD: I think this is the area that we really need to consider in terms of what do we do to help these children and these families. Knowing the information is all well and good. But where do we go with this? The school can do what they can do, but unless that child is removed from what's causing the damage, whether it's the soil around the house or if it's the chipped, broken paint inside the house, paint that may go down many, many layers, too, and to a lead-based paint which was used in the house years ago, that child is still exposed to the same risk. So I ask you to consider this issue as you weigh in on this bill. Thank you for your attention to this. [LB204]

SENATOR GLOOR: Thank you, Senator Howard. Senator Pirsch, you're recognized. [LB204]

SENATOR PIRSCH: Members of the body, I wonder if Senator Council might yield to a question or two. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR PIRSCH: Thank you. And I had a conversation with you off the mike, Senator Council. And I thought maybe the members would appreciate having that knowledge as well. But with respect to the current paradigm of immunization requirements that are on the statute and have been for a while, there is an exception with respect, a limited exception with respect to moral or religious observances. Is that correct? And that would also be part of your bill, correct? [LB204]

SENATOR COUNCIL: Yes, Senator Pirsch. In fact, the lead testing requirement was just added to the current section of the law that deals with immunization. And that current section of the law has a couple of waiver opportunities, not the least of which is a religious objection to the particular medical procedure. [LB204]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR PIRSCH: Thank you for that. And tell me if I have this correct now. This would...your plan would utilize schools then as the requirement for ensuring that these children have received this sort of testing. And then there were questions that have just recently been put to you on the floor with respect to we're worried about placing this on the schools, those type of questions. Is the idea that, and tell me if I have this correct, that you want to use the school as a backdrop, that there are other programs and funding sources that may potentially address this type of blood testing, especially in highly problematic areas, at an earlier age, but at the very least this would be a backdrop then that would ensure that all children are tested. Is that your idea? [LB204]

SENATOR COUNCIL: Yes. And, Senator Pirsch, if I may elaborate. [LB204]

SENATOR PIRSCH: You may, sure. [LB204]

SENATOR COUNCIL: The primary objective is to make sure that all children, before reaching age 5, have been screened for lead and tested if necessary. And the screening provides the information to determine whether or not the actual blood test has to occur. And since the current law requires immunization to have occurred before a child enters kindergarten and these immunizations occur over the course of the babies development, from age 14 weeks up until age 5, that I viewed that immunization schedule as the vehicle to be used to add the blood-lead test. And if you looked at EPSDT forms from other states, they specifically note that at age 12 months, age 18 months, age 24 months, age 36 months that the child should have a blood-lead test. Those months also correspond, in many respects, to when children should receive these immunizations. So my thought was it would increase the likelihood that the test would occur and it would reduce the likelihood that the parents would have to go to an additional cost for an additional visit to a healthcare provider in order to accomplish the blood-lead testing. So that's why it's tied into immunization. And as far as the school's involvement, Senator Pirsch, currently the parents come in and register and they

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

provide... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...evidence of immunization. This is no different. They would be providing evidence of a blood-lead test. The schools would have no additional obligation than what they have now, other than making sure that parents receive information about the immunization and blood-lead testing requirements. [LB204]

SENATOR PIRSCH: Thank you. I would yield the balance of my time to Senator Council if she would like to add to those comments. [LB204]

SENATOR GLOOR: Thirty-five seconds, Senator Council. [LB204]

SENATOR COUNCIL: Thank you for yielding, Senator Pirsch. I'll wait for my time in the queue, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Pirsch and Senator Council. Senators wishing to be heard: Karpisek, Schumacher, Sullivan, Lautenbaugh, Council, and Pankonin. Senator Karpisek, you are recognized. [LB204]

SENATOR KARPISEK: Thank you, Mr. President, members of the Legislature. Would Senator Adams yield to a couple questions, please? [LB204]

SENATOR GLOOR: Senator Adams, would you yield? [LB204]

SENATOR ADAMS: Yes, I will. [LB204]

SENATOR KARPISEK: Thank you, Senator Adams. I think Senator Fischer brought up the fact about the private schools not being included in this bill. And is that correct?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

[LB204]

SENATOR ADAMS: That's right. The committee amendment does take out the private, denominational and exempt school students. [LB204]

SENATOR KARPISEK: Okay. But the green copy had them included, is that correct? [LB204]

SENATOR ADAMS: That's correct. [LB204]

SENATOR KARPISEK: Okay. Any reason why that is, Senator or do you want to share that...anything with us or... [LB204]

SENATOR ADAMS: You know, I can only give you my personal opinion, not necessarily the opinion of the committee, and certainly not, I'm not opining on behalf of Senator Council. But so very, very often in nearly everything we see in our committee the exempt school folks and certainly the parochial school folks come in and would prefer not to have the state regulations imposing on them. And it seemed to me by exempting them it would help Senator Council's bill more than anything else. Now I would tell you, though, that when it comes to immunization those schools are included under state law. [LB204]

SENATOR KARPISEK: Thank you, Senator Adams. And that's exactly what I was going to say, that they're included on the immunizations, that's a tough one for me, I guess. I've stood up on this issue when we talked about seat belts in buses, it was good for the public schools but not for the private. I feel if this is good for the public schools, then I feel it's good for the private and I will be bringing an amendment to say so. I don't see why we should make a separate idea there. Now I will say I really like Senator Campbell's or, sorry, Senator Council's idea here. I'm not sure that the schools are the place to do this, but I don't know where else we would do it. I don't know and I'll put that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

out there that she can answer maybe on her own time. But I think there are other immunizations that have to be done earlier, maybe it could be then. I don't know. That's not really my problem with the bill right now. My problem with the bill right now is making one school district do it but not the other school district because it's private or parochial. If it's a good idea and it's very good for one, I don't know why it wouldn't be good for the other. I know there will be some argument on that, but that's fine. I don't want to take up...I don't want to take the debate away from the issue that it's at right now and the amendment that we're on. I will be bringing my amendment later. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) Returning to floor debate, Chair recognizes Senator Schumacher. [LB204]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Initially, I want to comment on Senator Karpisek's comments. I think he makes a good point. If this is a public health issue and if kids are really being hurt because of lead in the environment, and if the only reason we're doing just the public schools is because of a matter of convenience in administering this program, I would think that we have an obligation to all kids if, indeed, it's a needed item. Now as I understand it, lead does not naturally occur in a human body. You got to eat it or breath it or somehow get it into you and it's got to come from somewhere. It's got to come out of naturally occurring deposits, maybe in the ground. I don't know if we have any of those in Nebraska or not, but it's got to come out of the environment, which may be had a factory or something spewing it into the air and it settled out, it comes off of perhaps paint or toys from China and it comes from maybe when we used to have lead-based gasoline along the Interstates where there was heavy traffic areas where it came out. So it's the ingestion of that process that causes the kids to have a higher level of lead in their bodies. We are in a risk adverse society. It seems that if there's a tiny risk of anything, we want to spend resources to fix it. But we are also in an age of limited resources, which we can't always spend on what we want in unlimited quantity to get rid of a tiny risk. So the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

question I have, if Senator Council will yield to a question is, is there any way that we can make this program smarter by doing some type of initial screening of the state to find out where the high risk zones are? Most of the counties on this map, even though they have very low tests being taken, show that it doesn't seem to be much of a problem, and then test only in those areas which meet some threshold level after we get a baseline of where the highest risks are? [LB204]

SENATOR GLOOR: Senator Council. [LB204]

SENATOR COUNCIL: Thank you. And, Senator Schumacher, if I can just refer you back to my opening. According to the CDC and others, the children at greatest risk of lead poisoning reside in homes constructed before 1978 and live in...or live in poverty. Senator Fulton just provided you with the poverty data; 44 percent of children in schools in the state of Nebraska are Medicaid eligible, which means they live at and below poverty. In my opening, I provided you with data that shows that 78 percent of the housing stock in the state of Nebraska was constructed before 1979. Those two factors combined put the state of Nebraska and its children under age 5 at risk of lead poisoning. Now in terms of any other kind of data that could be gathered, those are the factors that are going to be considered. If you look at the bill or if you look at the handout, the screening tool that is recommended by CDC tells you what the risk factors are and where you find them. Beyond that...those criteria, I'm not aware of any other better indicator of whether children in the state of Nebraska are at risk of lead poisoning. [LB204]

SENATOR SCHUMACHER: Well, it would appear that... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR SCHUMACHER: ...either there is something in the environment in Douglas and Lancaster County or kids there eat a lot more of their woodwork. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: Well, what one of the things is, and if I could explain, what the data just shows you the number of kids who were actually tested. It doesn't tell you how many kids are in that county or how many kids tested at a level below 10 but still at the high end of the test. And when you look at Douglas County, for example, populationwise, in addition to the lead in the environment from gasoline, we had a lead smelting plant, we had the battery plant that added additional lead to the environment. But if you also go to Douglas County, the primary source of lead poisoning of the children in Douglas County is not the lead in the soil, it's lead from the home. [LB204]

SENATOR SCHUMACHER: And that was my... [LB204]

SENATOR GLOOR: Time, Senators. [LB204]

SENATOR SCHUMACHER: ...initial question, whether or not... [LB204]

SENATOR GLOOR: Time. [LB204]

SENATOR SCHUMACHER: Time? Okay. [LB204]

SENATOR GLOOR: Senator Council, you are recognized. [LB204]

SENATOR COUNCIL: Thank you. And I'll try to follow up with that. Again, if I could explain the map that was passed out. The lighter blue is just a lower number of tests. That means if it's light blue there was somewhere between 0 and 71 kids tested. The reference to Scotts Bluff shows it's darker blue because 688 children were tested. The map is no indicator, and those colors have no relationship to anything other than the number of kids tested. So the darker the blue, more children have been tested. So it doesn't have any bearing on the actual results of the testing or the percentages per se. I do want to respond to a point made by Senator Howard. And indeed, it was the same

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

point that was made last year when this bill was introduced. I do not disagree that the way to prevent...the best way to prevent lead poisoning is to alter the environment in which these youngsters live. And one of the principal ways that can be done, and I've been working on this, on lead issues and lead poisoning issues now for nearly 7 years as a part of the Omaha lead superfund site. Something as simple as providing instruction on how to properly clean your home can reduce the risk of lead poisoning. It doesn't always require a complete renovation of the home to abate lead poisoning. And in fact, one of the organizations that testified in support of LB204 is an organization that provides cleaning kits to families who live in housing where the children have been exposed to lead. Now in terms of dollars for actual renovation, I want to remind and thank the body that last year this body voted to appropriate \$200,000 so that the city of Omaha could seek a matching...a grant from the Housing and Urban Development. Omaha did receive that \$2 million grant and it is providing those funds to families who actually need construction-related abatement work to be conducted. I made a reference to what was done in Kearney in 2007. Kearney received an EPA grant of \$90,000. They used it for lead screening and also to provide families with financial assistance to correct any lead hazards in their homes. Is there enough money out there to correct all of the home lead hazards? No, but if families are provided with the information that they can access easily through their county health departments and other organizations, again, any preventative measure is better than no preventive measure. And tying it to education because, believe me, if these children continue to be exposed to lead and at high levels, we are going to pay. We're talking about the expenditure now, \$51,000 a year, we're going to pay far more than \$51,000 a year in educational remedial work with these children and the effects of... [LB204]

SENATOR GLOOR: One minute, Senator. [LB204]

SENATOR COUNCIL: ...the behavior. There is research that shows a direct correlation between lead poisoning and juvenile delinquency. And in fact, for some of my attorney colleagues in the body, they may remember about a year and a half ago, former

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

Douglas County Attorney, Stu Dornan, raised blood lead poisoning as a defense for a young woman he was defending in a criminal case. She had in her medical records blood-lead tests approaching 30 micrograms per deciliter. And he submitted an argument that that affected her ability to reason. And while it didn't rise to the level of an insanity defense, it did provide some defense. So the cost issue in terms of the state of Nebraska, I can't give you direct dollar costs, but by preventing... [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Senator Pankonin, you are recognized. [LB204]

SENATOR PANKONIN: Thank you, Mr. President, members of the body. I had a nice visit with Senator Council right before we came into session this afternoon. And I sure understand the problem. I do have concerns about if this is the solution. I do think it's another mandate on our school districts, all of them. And I even mentioned to Senator Council that, you know, obviously, Class V District, OPS specifically, and I know there are other areas of the state that have this problem. But I think maybe there's an accommodation we could make for the districts that are more directly affected. But I do think we're pulling in to a mandate here, if you just read the amendment about each school district shall make diligent efforts to inform families prior to the date of school registration of the immunization requirements of this section. I know, we've heard in my office from school nurses in my district who tell about the difficulty and challenges of getting all the other immunization paperwork required. And this adds another requirement to that. And then further down on the amendment it says, each school district shall make diligent efforts to inform families prior to the date of school registration of the blood-lead testing requirements of this section. Laudable goals, understand what the problem is and what some of the consequences are. But there



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

again, are we attacking it in the right fashion without pulling in a lot of other consequences for our school districts? And so I'm listening to the debate, but I am thinking that there needs to be some changes before I'll be able to vote for the amendment which is the bill. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Pankonin. Senators wishing to be heard: Christensen, Council, Nelson, and Bloomfield. Senator Christensen, you're recognized. [LB204]

SENATOR CHRISTENSEN: Thank you, Mr. President. Would Senator Council yield, please? [LB204]

SENATOR GLOOR: Senator Council, would you yield to a question? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR CHRISTENSEN: Senator Council, let's say a child is tested and has dangerous levels of lead or above the recommended levels and they determine it comes from their home. We treat the individual. What happens? Is there a way of taking care of the problem that's coming from the home? How does this process all work? [LB204]

SENATOR COUNCIL: Well, if I understand the question, Senator Christensen, at least from LB204's perspective, LB204's perspective is to alert families to the fact that they may be residing in a location that presents lead poisoning hazards to their children. And that's the information that would be the fact that their child tested with an elevated blood-lead level lets them know that there are factors that are in that child's environment that may need to be addressed. It may be something as simple as dad works at a factory that deals in lead and doesn't realize, when he comes homes and doesn't take his shoes off at the door and walks through the home, that he's tracking lead dust. But

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

by going through the screening, the individuals are made aware of where the lead hazards are and how they can go about addressing them. [LB204]

SENATOR CHRISTENSEN: So basically then the parents could adjust their lifestyle or whatever or if it's in the paint in the house been a problem they could move or fix it up. It's the knowledge of understanding the bill, it's the knowledge. But I wondered what really happens if we...the kid can be treated, correct? [LB204]

SENATOR COUNCIL: Well, see, there's actually...you can't remove the lead from the blood practically. And they only do it if the child has an extremely high concentration of lead in their soil (sic), and it's called chemical chelation where it's a very painful process where they actually extract the lead from their blood. But if you're at 10 micrograms per deciliter, no medical provider is going to suggest that you subject your child to chemical chelation. But what has occurred more often than not is that that concentration of lead at that 10 level has affected the portion of the brain that...where the cognitive development occurs. And that is irreversible. And that's why I'm trying to get this information out and having parents understand and appreciate the need to find out as early as they possibly can so they can take corrective measures to eliminate any lead hazards is the purpose and intent of the bill. [LB204]

SENATOR CHRISTENSEN: Okay, that was my concern, what really could be done, if we could handle the situation. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Christensen. Senator Council, you are recognized. [LB204]

SENATOR COUNCIL: Yes, thank you again, Mr. President. And I certainly appreciate all of the questions and all of the concerns that have been expressed. But I would be less than candid if I didn't tell you that it is rather upsetting to me to hear the concerns that are now being expressed by, I understand, the School Nurses Association. And let

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

me put it in context. As I indicated, the exact same bill that is LB204 was introduced last session. It had a hearing last session, it had a hearing this session. I have not received not one, I, personally, have not received one communication from any school district, from any school district association. I was provided with a copy of a letter and letters that other senators have received recently from the School Nurses Association. But I must tell you that these concerns are, in my opinion, ill-founded and misplaced. In terms of what the schools have to do, the only thing the schools have to do is provide information to parents. And if you look at the fiscal note, there is no fiscal consequence even suggested because schools are currently providing immunization information to parents. And if a child comes in to be enrolled in school and doesn't have proper immunization records, I guess, I mean, I'm having difficulty understanding what additional burden is being placed on a school nurse to notify a parent, just as they would if the child lacked one of the immunizations, that your child is lacking a blood-lead test. I was told that one of the concerns from school nurses is the cost to parents. Well, I appreciate their concern for the cost to parents, but we addressed that during both hearings. As I indicated, there's grant money that most of the communities in Nebraska have taken advantage of to provide blood-lead testing for children at no cost. In fact, the Department of Health and Human Services, for a number of years, has been the recipient of grant money from the Centers for Disease Control. And it wasn't until the last few years that DHHS did not seek those grant dollars. When I inquired about it, I was told that, well, that was basically the result of some staffing changes and, you know, the new person in the position, you know, really didn't pursue it. But I've been told that the Department of Health and Human Services is going to renew their application for grants from the CDC to provide free blood-lead testing. So again, the cost concern was raised a year ago. I thought it was addressed to everyone's satisfaction. And to hear from people who didn't bother to provide their input not once but twice during hearings held on this bill is rather disturbing to me. But nevertheless, if there's a concern that can be addressed without sacrificing what LB204 does, and LB204, I firmly believe, saves this state financially and in terms of human capital for years... [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...to come. In response to Senator Pankonin, I'm sorry, Senator Pankonin, I don't believe this is a Class V school district only concern. While the issue has been more prominent because more media attention is being given to it in Douglas County doesn't mean that it isn't as great or not a greater problem in other counties where there are smaller school districts. Quite frankly, the percentage of people who really understand the environmental concerns of lead poisoning is just beginning to be heightened in this state. And I think I shared with Senator Pankonin in 2007, the Department of Health and Human Services believed that the elimination of lead poisoning was such a priority in Nebraska, they developed the Nebraska Coalition to Eliminate Childhood Lead Poisoning. [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Senator Nelson, you are recognized. [LB204]

SENATOR NELSON: Thank you, Mr. President, members of the body. Senator Council, I'd like to explore some other things here, if you are willing to yield. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR NELSON: Thank you, Senator. I'm referring to the 2010 Nebraska blood-lead levels, if you... [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: Um-hum. yes. [LB204]

SENATOR NELSON: ...have that in front of you. [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR NELSON: The number of light blue counties is overwhelming there. Just looking at the center there, why...what was the occasion for, perhaps, in Lincoln County, the large county there just testing three? [LB204]

SENATOR COUNCIL: Well, I'll give you my opinion, Senator. And that's the reason for LB204, that the consciousness level hasn't been raised to the point where families of children under age 5 are aware of the risks exposed to them...to their children by exposure to blood-lead testing, and that it's not occurring when these children are being administered their well-baby exams. [LB204]

SENATOR NELSON: Well, but there must have been some reason. Is it possible that the parents...that there was some retardation noticed and therefore the test was given to see if there were blood levels...high blood levels of lead? [LB204]

SENATOR COUNCIL: No. I'm going to speculate again, Senator Nelson, that the number 3 that you see in Lincoln County represents the children whose parents took them to a physician who administered the EPSDT in accordance with the guidelines and performed a lead screening as a part of that child's well-baby exam. [LB204]

SENATOR NELSON: All right, thank you, Senator. Let me observe that I don't have an adding machine here but pretty much across the board, it's less than 1 percent, you know, of the number of people tested, persons tested, even in Douglas County and Sarpy County. And that's very, very low. And you and I both know it appears for a variety of reasons that we have a lot higher level of lead in Douglas County and Sarpy

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

County. Would you have objection to limiting your bill just to counties with high populations or a frequency of occurrence in higher lead levels rather than make school districts all across the state ask these question and perform these tests? [LB204]

SENATOR COUNCIL: Well, first and foremost again, Senator Nelson, my bill doesn't require a school district to do anything other than to accept a report from a physician or advise a parent that their child doesn't have all of the recommended immunizations and blood tests. All it does is add to something school districts already do. They already send out information to families whose children are getting ready to be registered. You add two sentences to what they're already sending to parents. I, quite frankly, don't believe that that's some unreasonable burden to be placing on school districts. It doesn't require a separate piece of information. It just says provide them with this information. They provide them with immunization information. All they have to do is add to that document information regarding a blood-lead test. And in response to your primary question, yes, I would have an objection because all of the children in the state of Nebraska are at risk of lead poisoning. And I would not be a responsible representative of the children of this state if I said, okay, just because a greater number of children in my county... [LB204]

SENATOR NELSON: Thank you, Senator. I'm still on my time and I appreciate your comments. [LB204]

SENATOR COUNCIL: Well, I was responding to your questions, Senator. [LB204]

SENATOR NELSON: All right. Taking a look at the original fiscal note here for the long one,... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR NELSON: ...Health and Human Services has already tested 2,740 children

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

at a cost of about \$48,000. Have they been standing that expense by themselves, Health and Human Services, if you know with... [LB204]

SENATOR COUNCIL: Pardon? [LB204]

SENATOR NELSON: It says right here that HHS currently pays for blood testing to determine lead levels for about 2,740 children at a cost of \$17 each, that's \$48,000. So they have been spending that without any special appropriation. Is that correct? [LB204]

SENATOR COUNCIL: Yes, and the \$51,000 fiscal note is based upon the fact that not all Medicaid children have been tested. And if you start testing all Medicaid children, that would be the additional cost. [LB204]

SENATOR NELSON: Have they been getting any federal money to help them on those 2,740 children? [LB204]

SENATOR COUNCIL: Well,... [LB204]

SENATOR GLOOR: Time, Senators. [LB204]

SENATOR NELSON: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senators. Senator Bloomfield, you are recognized. [LB204]

SENATOR BLOOMFIELD: Thank you, Mr. President, members of the body. It will come as no great surprise to you that I'm not a big fan of personal mandates. I wonder if there's some way to do this more by just informing people and making it more of a voluntary thing. I fear unintended consequences. We go in, we mandate that these children be tested and we find something. How long is it until we mandate that we as a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

state go in and solve that problem for them, whether it be a dump that we should take care of or whether it be in the home? But because we found there is a problem, we as a state are suddenly going to find ourselves responsible for curing the problem within the home. I know it is not the intent of this bill to go there, but I fear we might down the road. And, hopefully, Senator Council will address that a little bit in her closing. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Bloomfield. A moment, members. Senator Council, you are recognized, but this would be your closing. You've already spoken three times. [LB204]

SENATOR COUNCIL: (Inaudible.) [LB204]

SENATOR GLOOR: We have other lights on. [LB204]

SENATOR COUNCIL: Well, then I'll wait for my closing. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Senator Avery, you are recognized. [LB204]

SENATOR AVERY: Thank you, Mr. President. I intend to vote for both these amendments an the main bill. I'm a member of the Education Committee and I do remember the lengthy discussions we had about this. Seems to me that it shouldn't be an issue. When we were talking about what are the known negative effects of lead poisoning and what it does to children and when we put that in the context of our responsibilities here in this body it seems to me to be a fairly easy decision to make. I did a little bit of work this morning on the negative effects of lead poisoning. As Senator Council has mentioned, we know that it lowers IQ. It also affects various aspects of a child's behavior causing inattentiveness that can affect schoolwork, hyperactivity, disorganized behavior, inability to follow instructions, higher failures in school, greater



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

absenteeism, increased aggression and delinquency. And these effects are long-lasting and may be permanent. Children with high levels of lead complain of frequent headaches, abdominal pain, loss of appetite, they may display clumsiness, agitation, sometime lethargy. The main point here is that lead poisoning imposes heavier burdens on children who already are starting out with disadvantages that are associated with poverty. Senator Fulton pointed out that 44 percent of our school children are on free and reduced lunches. That's an indicator of poverty. The negative effects of lead poisoning are linear and permanent, linear and permanent, they follow you through life and they can have long-term effects on the quality of life. In the early 1990s the CDC, Centers for Disease Control, recommended universal testing. I think that was 1991 to 1997. They since have backed off that recommendation of universal testing after finding out that targeted testing was probably more effective. They discovered that the prevalence of lead poisoning was so much higher among poor children that it made more sense to target poor children. So now what the CDC is suggesting is that all Medicaid eligible children be tested. So I am asking you to ask yourself if this is something that the state of Nebraska ought to do. I think we should. I remember a discussion in the committee about the fiscal note and the discussion was rather alarming when it appeared from what information Senator Council had, it appeared that the Department of Health and Human Services was messing with the note, if I may put it that way, in a manner that seemed to suggest they didn't want to do this program so therefore they were just going to make it more difficult for us. This is not an unreasonable expectation. It's not an unreasonable action for us to take because it does meet an identifiable need. Remember, the effects of lead poisoning are linear and permanent. We can do something about it by testing these children early and treating them. I suggest that we think carefully about this. And I intend to vote green. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Avery. Senators in the queue: Nelson, Conrad, Cook, and Ken Haar. Senator Nelson, you're recognized. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NELSON: Thank you, Mr. President, members of the body. Despite all of the statistics given to us by Senator Avery, I still have some reservations about this bill. He mentioned targeting. That makes a lot more sense to me. As children from poverty homes come into school and there appear to be some deficiencies, that then is the time to contact the parents and ask them to do some testing or if they're at poverty level or below then go ahead and pay for that. It doesn't make much sense to me to have testing across the board all the way across the state of Nebraska at the very low levels that we see here on the sheet with the various blue colors. Yes, you know, it's a serious thing, there's no question about it. We want to detect these higher levels or even substantial levels and try and do something about it. But I don't feel that this is the answer. The other objection I have is that we're going into the Health Care Cash Fund, perhaps only to the tune of \$56,000 or something like that, but nevertheless it sets a precedent. And as a member of the...if you look at the bill and see what that money has been reserved for now for three large categories, I question whether we should be going in at this time and begin chipping away at the Health Care Cash Fund for costs and expenditures that perhaps could be diminished or even alleviated by a different approach to this. Therefore, I mean with all due respect to Senator Council, I know, believes earnestly in this. And I think we talked before on previous bills about the lead poisoning and the amount of money that is spent. And I always have questions about whether it's worthwhile to spend that amount of money. And we're going to be doing it every two years we're going to have to appropriate because if there are going to be, at least in Douglas County, for instance, testing every person that comes in to kindergarten you're talking about, I don't see the figures right here, about 8,000 students and Lancaster County as well. So I question whether perhaps by amendment we can't find a better way to do this or take another look at this. And I cannot stand in support of the amendment and the bill at this time. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Nelson. Chair recognizes Senator Conrad.  
[LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR CONRAD: Thank you, Mr. President. I'm carefully listening to the debate and would be happy to yield any additional time to Senator Council, if she would so desire. [LB204]

SENATOR GLOOR: Senator Council, 4 minutes 50 seconds. [LB204]

SENATOR COUNCIL: Yes, thank you very much, Senator Conrad. And it's fortuitous that you're yielding time following Senator Nelson because I do want to address this issue of the fiscal note. And I hope that Senator Nelson appreciates the fact that if the Department of Health and Human Services tested only every Medicaid eligible child in Nebraska you would still need to find \$51,000 to add to their budget according to them. And that is the problem I have with the fiscal note. If they were doing what needed to be done now for just Medicaid eligible children according to them we have underfunded them in the amount of \$51,000. This is what the issue is, if you look at the document that I passed out that is from the Department of Health and Human Services guidelines, not every child requires a blood-lead test. And I hope people hear that. Not every child requires a blood-lead test. And what Senator Avery was referring to is the CDC guidelines which have been adopted by the Nebraska Health and Human Services Department which are reflected in LB204. If you would read that document it says, and this comes from the Department of Health and Human Services, if the response to those series of questions, if you receive one single affirmative response that child must receive a blood-lead test immediately and for every well-baby exam thereafter. So the Department of Health and Human Services should be incurring those expenses now. The screen also says if there's not one affirmative response to those questions, the child is not at risk of lead poisoning and the physician does not have to administer a blood test. So linking it to the immunization schedule was what I believed to be an opportunity to obtain the screening for all the children without the families having to incur an additional physician's office visit because these lead tests are supposed to be occurring now if the child is at risk of lead poisoning. So your concern, Senator Nelson, I appreciate it, about going to the Health Care Cash Fund. But I would submit to you, if

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

DHHS is doing what they're supposed to be doing under the Medicaid guidelines and CDC guidelines, you're going to need to find \$51,000 in General Fund money to provide for them because that's what it would cost for the children to receive the medical treatment that they're supposed to receive as it relates to lead. So that's why, and Senator Avery mentioned the discussion during the committee meeting because the initial fiscal note on this, Senator Nelson, was an additional \$241,000, which I questioned violently. It was reduced down in the amendment because I...currently, on immunizations the Department of Health and Human Services... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...the statute requires them to provide those immunizations at no cost to families who can't afford it. So when the bill was drafted, since we're sticking it in the same section, I stuck that in too. Well, DHHS came back and said, well, if we have to provide it for every family that's not able to pay for it, it's going to be this much more. But if we just have to provide it for Medicaid kids, who we're supposed to be providing it for now, we need an additional \$51,000, which means they've underbudgeted over the years for this program. So by limiting it to Medicaid, you're not going to...long answer to your question, if you limit it to Medicaid children you would not eliminate the \$51,000 fiscal note because they should be incurring that cost now. And the A bill amendment is to make it a reimbursement so that if they don't incur the cost there is no cash taken out of the Health Care Cash Fund. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Conrad and Senator Council. Senator Cook, you are recognized. [LB204]

SENATOR COOK: Thank you, Mr. President. Good afternoon, colleagues. I would like to yield my time to Senator Council, if she would like it. [LB204]

SENATOR GLOOR: Senator Council, 4 minutes 51 seconds. [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: And thank you, Senator Cook. And I know, Senator Cook, that you are well aware of the situation in Douglas County. But again, it's not my intent to focus on Douglas County. And that's not the level of my concern. My concern goes to the consequences of children being lead poisoned. And we as representatives being in a position where we can provide an opportunity for these young people to be sure that they receive the blood-lead test if they need it. Again that's the issue. The bill says, if you're screened out, you don't need a blood-lead test. If you're not at risk, if you're not living in poverty, if you're not living in a home that was built before 1978, if your dad doesn't work in a factory where he's exposed to lead, if you didn't immigrate from a country where there's lead in the food and there's lead in the pottery and there's lead in the toys, you don't have to be tested. Those are the factors that will control here. Again, because the effects of lead poisoning are so directly related to the cognitive development of children, the cognitive development of children and how they perform in school academically and behaviorally is why, I believe, and I respect everyone who doesn't, that putting it in a position where it has an educational link was the best place to put it. I appreciate Senator Bloomfield who says, you know, I don't like personal mandates. I appreciate that. But if you look at the action that this body takes on a regular basis, we've imposed, believe me, we've imposed more mandates that require school districts to do far much more than what LB204 requires them to do. And there's no question about the academic consequences of taking these actions, educating these families so that preventive action can be taken in the home and educational intervention can occur in the schools. Over the summer, during the interim, I did additional research on this matter. And I met with some of the staff at Building Bright Futures asking them for input on the best way to address this very serious problem as well as addressing concerns that were raised by the Education Committee when I introduced the bill last year. Principally, one of Senator Howard's concerns about, okay, child has an elevated blood-lead level, so what do we do now? And it was the good people at Building Bright Futures who directed me to a program administered by the Nebraska Department of Education: ChildFind. And if you look at the first draft of LB204, it specifically required

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

HHS to give families information about ChildFind. The committee thought it would be better not to specifically name the program because that name may change, but to insert the services they can provide. And what ChildFind does is if a child has a medical condition that could have a developmental impact they do an assessment and that child becomes eligible for... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...special education services as early as 6 months old or earlier. So if these parents are getting this information, if they're having their children tested between 18 months and 48 months, as the bill requires, they will know early on what their children's educational needs are. You know, that's one the by-products of mandating a lead screening. Now again, I can only tell you what has occurred in Iowa. And we often use Iowa as our measuring rod. In Iowa they have seen tremendous results from the enactment of their testing bill. And they do it just as LB204 provides, they link it to... [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Senator Ken Haar, you are recognized. [LB204]

SENATOR HAAR: Mr. President, members of the body, I passed out a sheet because I read these figures on the mike, but I wanted you to see them. This was just a random picking out of counties where it shows that more than one child was tested. And as you can see, Douglas County is certainly not the only county or Lancaster or Hall, in fact, Jefferson, Furnas, Box Butte, all those have higher percentages of children that were...found lead. I hope this will go to Select File. And before Select File, I will take all

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

these counties and work out a spreadsheet like this. Again, I believe that it demonstrates clearly that high levels of lead, elevated blood-lead levels are not just a problem in the counties with big cities. And as that's not the case, I think it's such a small price to pay for preventing permanent disability in children. The \$60,000 or so, whatever the amount was, could easily be spent on just one child in the future because of these kinds of problems. So I would urge you to vote for LB204, AM659 and AM938. I'd give the rest of my time to Senator Council, if she wishes. [LB204]

SENATOR GLOOR: Senator Council, 3 minutes 20 seconds. [LB204]

SENATOR COUNCIL: Thank you very much, Senator Haar. And I appreciate the data and the information you've shared with our colleagues because it's very important for everyone again to appreciate the fact that this is a statewide problem. I spoke to you and the committee received a written letter of support from health departments, county health departments across the state, some representing as few as 1 county, some representing 5, some representing 27. And it has been identified as a priority for them in term of their health goals. But again, if we think this is a problem limited to Douglas County or Class V school districts, again, I just commit to you the fact that the Nebraska Department of Health and Human Services, in 2007, identified lead poisoning as the number one preventable environmental hazard in Nebraska. They commissioned a coalition that is the...was the Nebraska Coalition to Eliminate Childhood Lead Poisoning and they put together a very comprehensive elimination plan. And I'm turning to page 22 of that elimination plan. Objective 20, the Nebraska Coalition to Eliminate Lead Poisoning will cooperatively provide education and outreach to Medicaid providers on the necessity to perform lead screens and increase screening rates among Medicaid providers. This is DHHS that identified that as one of the objectives of their Nebraska lead elimination plan. So the next question, if you're not thinking to ask it, is, you should think to ask it, what happened to the Nebraska lead elimination plan? Well, what happened was there was a change in staff and the new person, it wasn't a priority... [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...for that person. As well, that was the time when Nebraska decided to stop seeking CDC funds to provide grants for lead screening. But the next time I'm on the mike I'm going to read for you the organizations that were a part of the Department of Health and Human Services Nebraska Coalition to Eliminate Childhood Lead Poisoning. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Chair recognizes Senator Conrad. Chair recognizes Senator Schumacher. [LB204]

SENATOR SCHUMACHER: Mr. President, members of the body, we seem to be having disconnects here between needs that we can all agree on and whether bills that are purporting to be solutions but may not be solutions. We had one last week, I think we may have one here again today. We all can agree that lead may be a problem in kids that ingest lead and it may affect them. This particular bill, though, you only have to comply with this test if you are exercising your rights under our state constitution to a public education, otherwise you don't have to comply to take care of this need that we seem to all agree exists out there. That doesn't seem to be very reasonable. And then if you do comply, what does this accomplish? What happens if you find out a kid has got lead? Well, on page 10 of the amendment, apparently, all that happens is the parents get notification that their kid has got a high lead content and that they can get information from the state. Well, that doesn't really take care of much, particularly if the kid is coming from a home that is without the resources to deal with it or just plain doesn't care. But we've had representations that if...that there will be no expense and that you won't have to take this test if you do not meet some of these qualifications. And I'm looking through this screening, that if you trigger one of these then you have to be, at least that was the explanation, you have to have this blood test. One is, of course, that you...if you've lived in an old house; second one, if the physician certifies or the



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

nurse certifies that a 4-year-old kid has not eaten nonfood items. What 4-year-old kid has not eaten nonfood items some time in its age? So that would trigger the test automatically. Was not...the physician certifies that he doesn't have contact with someone who works in a job that has lead. Well, lots and lots of jobs have contacts with batteries and other things with lead. So as a practical matter, a physician in good conscience really could not sign a statement saying that this kid has never come in contact with some of the things that appear or triggered some of the tests on number 8. But I think we have a technical error in the bill in any relation because on page 8, line 19 it cites out the eight tests and then it has an "or" instead of an "and." So if you're okay on any of these, you don't have to take the test. That's an "or" at the end of line 19. And the test is not triggered if you manage to pass it on any one of these particular items, such as you've not lived in Mexico or Central America for three months. So I think there's a technical deficiency there that I'd like to call to the attention of the body. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Campbell, you are recognized. [LB204]

SENATOR CAMPBELL: Thank you, Mr. President. Good afternoon, colleagues. I think Senator Hansen and I spent the weekend in the same place because I seem to be coming down with his cold. I have a couple of questions for Senator Council. And I'm going to go through both of them, Senator Council, so we can kind of judge the time. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR CAMPBELL: If no testing is done until the school age, won't the symptoms have already surfaced? And number two, how would it be helpful to schools, if the child

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

has not been tested before, to have them tested? What is to be gained and is it too late? And, colleagues, these are some of the questions that I've heard as I've walked around. [LB204]

SENATOR COUNCIL: And I thank you, Senator Campbell, and I will try to be brief in my response. Number one, with regard to the age, the earlier the better because the child, once it's in their system the damaging effects begin. And waiting until they are 5 years old or about waiting until they're walking into the school building is a little late in terms of trying to take any appropriate action to prevent or remediate. For example, if the blood-lead test taken of a child at age 12 months, which is recommended, shows that they have 9 micrograms per deciliter, that medical provider should be telling that family so they can take some actions at home because as that child continues to ingest lead dust, which is the principle source, their blood-lead levels are going to go up. So when they come in for their 24 month exam, when they were a 9, they're going to be an 11. So, yes, the earlier the better. Now if the child, the first time they get the test, is at 5 years old, you will have the data and you will know that the child has an elevated blood-lead level and you will know that that child has the possibility of requiring special education services. [LB204]

SENATOR CAMPBELL: As a follow up question, one of the questions that comes to mind then is, wouldn't this child have already been identified as needing special education or some other prior to 5 years old, before they got to school? I mean, I understand that you could start collecting the data. But the question really is, wouldn't this have surfaced before that? And you're saying maybe not. [LB204]

SENATOR COUNCIL: Maybe not. And as I stated, they really don't manifest signs or symptoms of blood-lead poisoning until they get a little older. But that doesn't mean they haven't been lead poisoned earlier. But you just don't see the signs or symptoms. And many, many, many children go with lead poisoning being undetected because they've never had a blood-lead test. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR CAMPBELL: And I think what's important here is that some of our colleagues are struggling with why the inclusion of the educational system in this issue. And if I hear you correctly, Senator Council, and you tell me if I'm not hearing you correctly, is that even if you had to wait until school age, a, not all cases would be manifested enough... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR CAMPBELL: ...for someone to know. And number b, that still you would have the data to know about the child. [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR CAMPBELL: Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Campbell, Senator Council. Senator Ken Haar, you are recognized. This is your third time. [LB204]

SENATOR HAAR: Mr. President, members of the body, I have a question or two for Senator Council. [LB204]

SENATOR GLOOR: Senator Council, would you yield? [LB204]

SENATOR COUNCIL: Yes. [LB204]

SENATOR HAAR: So ideally the elevated lead level is discovered as early as possible, but early elementary school is not too late to prevent further damage. Is that correct? [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: That's correct. We're trying to prevent further damage. But if we test earlier, and like I said, if you look at the bill, you have to have it done between 18 months and 48 months, and again, I could have said, I could put in the bill you shall provide evidence that your child had been tested by no later than 12 months, but, you know, we're talking about mandates and imposing, trying to drill it down to the earliest possible age of a child where you could take preventive action. [LB204]

SENATOR HAAR: Okay. I'd give the rest of my time to Senator Council, if she wishes. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR COUNCIL: Thank you. And I wanted a direct...and I hope I'm not... [LB204]

SENATOR GLOOR: Three minutes fifty seconds. [LB204]

SENATOR COUNCIL: Thank you, Mr. President. I hope I did not misunderstand what my colleague Senator Schumacher was saying, but I guess I need to make clear and make sure that everyone understands the lead screening that is set forth in the bill, and I was getting this from some of my other colleagues who were hearing from people with concerns that they were laboring under the impression that the school district or a school nurse or someone would have to go through this screening. No, the screening is to make sure that medical providers are being consistent in arriving at their determination that a child does not need to have a blood test, and the assessment, Senator Schumacher, in response to your concern that there may be a technical error, it is an "or," because if any one of those factors exist, any one of them or a combination of them, a child is considered at risk of lead poisoning and should have a blood test. So if a doctor, during the exam, if the parent...and that's how it's done and I'm surprised no one has asked that question. I'm surprised no one has said, well, how can the child tell the doctor. But the parents provide the physician the responses to those questions. And

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

if any one of those questions the response is affirmative, under CDC guidelines that medical provider is to administer a blood test. If all of the responses are negative, according to CDC, as adopted by DHS, the child should at least have a blood-lead test at 12 months. That is not occurring and, as a result, far too many of our children are entering kindergarten not ready to learn. Now one of my colleagues provided me with information from the Nebraska Department of Education with regard to the program that I was talking about, Child Find. And for those who are concerned that I may be imposing too much responsibility on school districts, there's...the possibility exists, in terms of who's required to put the information out to parents, that we can undertake to have that done under current Chapter 51 where school districts already are supposed to be providing families with information regarding the special education services that are available to children under the age of five. So in terms of any additional burden on school districts, it appears that under Chapter 51 that they're supposed to be providing some of this developmental disability information currently and all LB204 would require is that they also provide them with information regarding how lead poisoning falls within the categories that makes a child eligible to receive these special education services. [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Chair recognizes Senator Cook. [LB204]

SENATOR COOK: All right. Thank you, Mr. President. Good afternoon, state senators, colleagues. I would like to yield my time to Senator Council, if she would like it, and if not, I will waive it. Thank you. [LB204]

SENATOR GLOOR: Four minutes forty-five seconds. [LB204]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: Thank you, Senator Cook. And allow me to correct something. The Nebraska Coalition to Eliminate Childhood Lead Poisoning was commissioned in July of '03 and the original lead elimination plan had a goal of totally eliminating lead poisoning in Nebraska by 2010, but as I indicated earlier there were some staffing changes and the coalition was allowed to go by the wayside. But I do want to mention for the record the organizations that were involved in the Nebraska Coalition to Eliminate Childhood Lead Poisoning so as to illustrate that this issue is in fact a statewide issue and has been acknowledged as such: Blue Valley Community Action Agency, Central Nebraska Community Services, Central District Health Department, Clay County Health Department, Dakota County Health Department, Dodge County Health Department, Douglas County Health Department, East Central District Health Department, Four Corners Health Department, Goldenrod Hills Community Services, Lincoln-Lancaster County Health Department, Mid-Nebraska Community Action, Nebraska Department of Economic Development, Nebraska Lead Poisoning Prevention Program, Nebraska Public Health Laboratory, Northeast Nebraska Public Health Department, Northeast Nebraska Development District, Omaha Community Advisory Group, Panhandle Community Services, Red Willow County Health Department, Southeast District Health Department, Southeast Nebraska Development District, Southwest Nebraska Public Health Department, Three Rivers Public Health District, University of Nebraska Cooperative Extension Offices, University of Nebraska Medical Center. I think that clearly illustrates the statewide implications relative to eliminating childhood lead poisoning. And in terms of the concerns that have been raised with regard to any additional burden on school districts, I'd be happy to sit down with those who have those concerns, and I want to state for the record I would have been happy to sit down with them before I designated this bill my priority, before the committee advanced it to General File, but, ladies and gentlemen, I heard no such concerns. They were not expressed to me, and I would have endeavored to address them had there been. Each concern that was directed to me was addressed. In particular, the implementation date, which was brought to me by a representative of the Lincoln Public

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

Schools, when she brought it to my attention I said, you know, that could be problematic. This goes into effect, it would go into effect July of '11, school district starts September '11; you really haven't had a chance to get information developed and distributed to parents. So my amendment, AM938, changes the effective date and makes it begin at the start of the 2012 school year. So again, had these concerns... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...been brought to me...and I'm not saying that individuals had to appear at the hearing on the bill or submit letters before the hearing on the bill. If at any time after this bill was introduced in January that someone with these concerns could have brought them to my attention, I would have endeavored to address them because the issue of eliminating lead poisoning in Nebraska is that serious of a matter to me; that it is my priority for this legislation session that we take appropriate action, and I think this is reasonable and appropriate action to eliminate childhood lead poisoning in the state of Nebraska. [LB204]

SENATOR GLOOR: Thank you, Senator Council. Senator Wallman, you are recognized. [LB204]

SENATOR WALLMAN: Thank you, Mr. President. Sad little humor, if you've ever been in any kind of a service--get the lead out. And I appreciate this bill from Senator Council. And if you've ever worked in a battery manufacturing plant, you're automatically tested. And you ingest a little bit of blood (sic) in your system and you've worked there so long, and that's it. So adults are tested as well. And you know it affects you if a battery manufacturer does that, so get the lead out. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Wallman. There are no additional members wishing to be heard in the queue. Senator Council, you're recognized to close on your

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

amendment to the committee amendment. [LB204]

SENATOR COUNCIL: Yes, thank you very much, Mr. President. As stated earlier, AM938 is offered for the purpose of addressing a concern brought to my attention about a school district's ability to prepare for the enactment of LB204 and that concern is real and legitimate. If LB204 is enacted, it would take effect July 2011 requiring school districts to be prepared to respond for children entering kindergarten in September of this year. AM938 merely provides that the school districts do not have to require proof of the lead test with the immunizations until the beginning of the school year 2012-2013. So with that, I would appreciate an affirmative vote to advance...to amend the committee amendment with AM938. And, Mr. President, I would at this point request a call of the house for the vote on AM938. [LB204]

SENATOR GLOOR: There has been a request to place the house under call. Members, the question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB204]

CLERK: 31 ayes, 0 nays, Mr. President, to place the house under call. [LB204]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Lathrop, Heidemann, Fischer, Loudon, Lautenbaugh, and Ashford, please return to the Chamber. The house is under call. Senator Fischer, Senator Ashford, the house is under call. Please return to the Chamber. Senator Council, all members are present and accounted for. How would you like to proceed? [LB204]

SENATOR COUNCIL: Roll call, regular order, please. [LB204]

SENATOR GLOOR: Mr. Clerk. [LB204]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

CLERK: (Roll call vote taken, Legislative Journal page 980.) 47 ayes, 0 nays, Mr. President, on the amendment to the committee amendments. [LB204]

SENATOR GLOOR: The amendment is adopted. The call is raised. [LB204]

CLERK: Mr. President, Senator Karpisek would move to amend the committee amendments, AM1014. (Legislative Journal page 980.) [LB204]

SENATOR GLOOR: Senator Karpisek, you are recognized to open on your amendment to the committee amendments. [LB204]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. As promised, this amendment would put the parochial schools back into the bill, as was intended, I think anyway, by Senator Council because it was in the green copy. I don't know that I will have this up for very long, but I do promise that if it comes back, if the bill comes back on Select File, I will file the motion. I don't want to hold the whole body up any more than is needed today. I do want to say, however, that I do feel if this is good for the public schools, it should be good for the private schools. I really get upset when one or the other is supposed to not have to go along with what's been adopted. I don't understand that, I won't understand that, and I'm going to fight against that every time I see it rear its ugly head. It happens on almost every bill that we see, as Senator Adams said. Why is that? I don't know. We talk about lobbyists for schools and how much complaining we hear about that. Boy, who's got a lobby on this is parochial schools and I, for one, am tired of it. After what I heard after I introduced this amendment, I may just really stick into it and let someone know how much I really don't appreciate that. But I appreciate the body more than trying to let someone know what I think about the way they act. I don't think just because someone wants to send their children to private schools they should be exempt from what the public schools do. If this is good for one, and I feel that it is, I am on board here with Senator Council. I mean absolutely no harm

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

to her bill by doing this. However, I'm not sure that schools are the right place to do it. But I've been listening to the debate and I understand where else we do it. I would like to hear a little bit of debate on this amendment. I may pull it; I may not. But I would like to hear a little bit more. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Louden, you are recognized. [LB204]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As Senator Karpisek mentioned here, with his amendment he puts the parochial schools back in and, good or bad or in between, however that is, that's altogether a different subject I guess because, first of all, the parochial schools don't usually receive much of a tax break to operate so it's all private, private operation. The main thing that I would want to point out is what you're doing here is you're putting a social issue on to the public school system. Now if you want to put a social issue on a public school system that's fine, but that's what it's been all about. There are many issues that we do...social issues that we have put on to the public school system over the years and then we complain about the cost of education and that sort of thing. When you start talking about some of your early childhood development and all of these type of deals, these are all social issues. And perhaps the schools can handle them. If you're willing to fund it that way, that's fine. But that's what this is, is this is somewhat of a social issue or a health issue and that's probably the reason the parochial schools have been exempt from having to do this. I don't have a problem with exempting them from it because this isn't something that I think we should do in order for a child to go to school they have to have a lead test. Should be a child can go to school and then this testing should be some other way of a procedure to come along to do this. So that's my opinion on how we...how come the parochial schools are exempt and I would be against this amendment. Thank you, Mr. President. [LB204]

SENATOR GLOOR: Thank you, Senator Louden. Senator Karpisek, you're recognized.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

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[LB204]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I expected a few more lights on this one. I do think that it comes to just the fundamental what is right is right. Senator Loudon is right, they don't get a lot of tax breaks or any, I don't know. Truthfully, I don't care. I don't know why we would give them any tax breaks. We have public schools. If they want to go and do something different then that's up to them and they can pay for it. I have no sympathy for that type of thinking. If I want to drive a bigger car I'll pay for it. We can make any kind of analogy we want to. If that's what they want to do I have no ill will toward them, however, I don't want to give them any break on it either, and that comes back to this exact point of if we're going to give them...give one thing to the public schools, we're going to give it to the private schools. The private schools also don't have to do a lot of things like SPED and those sort of things. Who ends up with those costs? The public schools do. We can cherry-pick at the private schools and we can take who we want. We can maybe even go get people we want, and I don't want to go down that line right now but I on Select if we get there. But they don't have to take those kids. They don't have that cost, I guess. I don't think that's right but if that's the way it is, that's the way it is. I do think that Senator Council is on to a very, very good problem here to try to help it out. I don't know if her bill gets us exactly where we need to be. She's trying. She's seized the problem and she's trying and I respect that. I wish we could do it some time earlier in life to make sure that the kids don't already have some problems with the lead poisoning before it's...I don't want to say too late but before we can catch it. Maybe as we talk through this we will find somewhere else to have the testing. I don't know. Again, I guess I will pull this amendment, and I will bring it on Select though, so we can move on and see how this goes. Again, I don't want any harm to come to Senator Council's bill because of my amendment so, Mr. President, I would like to withdraw AM1014 to AM659. Thank you.

[LB204]

SENATOR GLOOR: So noted. We return to the committee amendment and debate.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

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Senator Council, you are recognized. [LB204]

SENATOR COUNCIL: Would you check, Mr. President? I thought that was my third time and my light had been on for Senator Heidemann's amendment. Would you check? I think you advised me...oh, I haven't talked on the amendment. [LB204]

SENATOR GLOOR: We're on the committee amendment. [LB204]

SENATOR COUNCIL: (Laugh) I'm so confused. Thank you, Mr. President. I want to share some information. If anyone doubts that people watch this body while we're in session, the e-mails that I periodically receive from viewers should be an indication and someone who is heavily involved in childhood lead prevention efforts in Douglas County just sent me...e-mailed me a copy of an article and it kind of refers to a question that Senator Campbell had and that's because over the years all of the research has directed lead testing absolutely to begin occurring at age 12 months and continuing until age 72 months, the belief being that those are the most vulnerable points in a child's brain development and that lead exposure after age 6, the consequences are not as great or don't escalate as quickly. And it kind of gets to the point about, well, why are you...what good does it do to wait till right before a child enters kindergarten. And this is an article and it's a report on a study that was presented to the Pediatric Academic Societies this month and it says: "School-age children at greater risk from lead exposure than originally believed." School-age children are at greater risk from lead exposure now than toddlers, it is believed by the Cincinnati Children's Hospital study. Although we typically worry about protecting toddlers, our study shows that parents and pediatricians should be just as, if not more, concerned about lead exposure in school-age children, said Richard Hornung of Cincinnati Children's Hospital and a coauthor of the study. I won't read the whole report but I want to point this out: For children, however, with the same average blood-lead levels through age six, those who received more of their exposure at age six had substantially greater deterioration in their intellectual ability than those most heavily exposed at age two. Why do I read that to you? Well, my friend

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Rough Draft

Floor Debate  
March 28, 2011

---

and colleague Senator Louden referred to us as trying to address a social problem with LB204. I want this body to know that this is not an attempt to address a social problem. It is an attempt to address a developmental problem, an educational problem that children across the state of Nebraska are at risk of falling prey to. And, Senator Karpisek, I just, in response to your amendment, you were correct that the original version of the bill included all children and that's been the version of the bill from its inception, the first introduction last year and this introduction. And I want the record to note that I never received any opposition or objection from private or parochial schools to the way the bill was originally drafted. There was a genuine, though, committee concern that that kind of objection would raise its head after the bill was advanced and... [LB204]

SENATOR GLOOR: One minute. [LB204]

SENATOR COUNCIL: ...wanted to protect the bill, and I appreciate Senator Adams for that. But if you would ask me whether I'd have a problem with your amendment, and my light was on but you were closing, I wouldn't. And as to the amendment, again, the amendment addresses the...the other aspect of the amendment addresses the financing going to the Health Care Cash Fund, and to Senator Schumacher on the mike I will publicly acknowledge that you are right and that technical amendment needs to be made. The "or" should be an "and." And I appreciate you taking the time to read it that carefully. So in terms of that change, that could be made on Select File, hoping that my colleagues will see the value of advancing the bill. [LB204]

SENATOR GLOOR: Time, Senator. [LB204]

SENATOR COUNCIL: Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. There are no senators in the speaking queue. Senator Adams, you're recognized to close on the committee

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

amendments. [LB204]

SENATOR ADAMS: Thank you, Mr. President. Let me remind you very quickly what the committee amendment does. First of all, it does transfer the \$51,273 from the Health Care Cash Fund to HHS. It does remove the language that Senator Karpisek and Senator Council have discussed about removing the parochial, private, as well as exempt school students from this and the committee did make that decision just to eliminate one of the hurdles. But, of course, it's a policy decision of this body where you want to go with it. And then finally of equal importance is that it clarifies the matter that if a young person tests at the level prescribed in a bill then parents will be notified. It is not an immediate mandate that says they instantly qualify for special ed. It merely means that they will be notified that, if the parents or the teachers decide if assessment is necessary because of certain behaviors that begin to emerge, that it gives them a heads up that these things may occur. That's the amendment, Mr. President. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Adams. Members, the question is, shall the committee amendments to LB204 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB204]

CLERK: 29 ayes, 0 nays, Mr. President, on adoption of the committee amendments. [LB204]

SENATOR GLOOR: The amendment is adopted. [LB204]

CLERK: I have nothing further on the bill, Mr. President. [LB204]

SENATOR GLOOR: Seeing no further members wishing to speak, Senator Council, you're recognized to close on the advancement of LB204. [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COUNCIL: Thank you, Mr. President. Colleagues, I'll be brief. I believe the elimination of childhood lead poisoning in Nebraska continues to be a priority health item for this state. I think that LB204 takes us a long way towards achieving that goal and I would appreciate your affirmative vote on LB204 advancing to Select File. And if there are any concerns that have been expressed on the floor today or should otherwise come to your attention, all I ask is the courtesy of letting me know and providing me with an opportunity to try to address your concern. Thank you. [LB204]

SENATOR GLOOR: Thank you, Senator Council. The question is the advancement of LB204 to E&R Initial. All those members in favor vote aye; all those opposed vote nay. Senator Council, for what reason do you rise? [LB204]

SENATOR COUNCIL: Yes, I rise for a call of the house. [LB204]

SENATOR GLOOR: There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB204]

CLERK: 38 ayes, 0 nays, Mr. President, to place the house under call. [LB204]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator McGill, Senator Pankonin, Senator Ashford, please return to the Chamber. Senator McGill, please return to the Chamber. The house is under call. Senator Council, all members are present or accounted for. How would you like to proceed? [LB204]

SENATOR COUNCIL: Roll call, regular order, Mr. President. [LB204]

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR GLOOR: Mr. Clerk. [LB204]

CLERK: (Roll call vote taken, Legislative Journal page 981.) 29 ayes, 9 nays, Mr. President, on the advancement. [LB204]

SENATOR GLOOR: The bill advances. The call is raised. Mr. Clerk, announcements? [LB204]

CLERK: I do, Mr. President. [LB204]

SENATOR GLOOR: Items for the record? [LB204]

CLERK: Thank you. Judiciary, chaired by Senator Ashford, reports LB276 to General File; LB665, General File; LB251, General File with amendments. Amendments to be printed: Senator Nordquist, LB509; Senator Campbell to LB541. That's all that I have, Mr. President. (Legislative Journal pages 981-985.) [LB276 LB665 LB251 LB509 LB541]

SENATOR GLOOR: Thank you, Mr. Clerk. Continue with General File, LB204A. [LB204A]

CLERK: LB204A by Senator Council, relates to appropriations. (Read title.) I do have an amendment to the bill by Senator Council, Mr. President. (AM989, Legislative Journal page 985.) [LB204A]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Council, you are recognized to open on LB204A. [LB204A]

SENATOR COUNCIL: Yes, thank you, Mr. President. As I stated during our discussion of the underlying bill, LB204A is the appropriation. There's an amendment that was filed



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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

to the A bill and all it provides is that the funds will be transferred from the Health Care Cash Fund, the original A bill, and the amendment to the A bill removes the emergency clause because my amendment to the committee amendment moves the effective date of the bill to September 2012, so there's no need for an emergency clause on the A bill. And the A bill amendment provides for a reimbursement as opposed to a direct appropriation to Health and Human Services for the \$51,000 that would be required if every single child on Medicaid or the CHIP Program had to have a blood-lead test. And with that, colleagues, I'd appreciate your affirmative vote on the amendment, AM989. [LB204A]

SENATOR GLOOR: Thank you for opening on LB204A, Senator Council. Senator Council, would you now like to open on AM989? [LB204A]

SENATOR COUNCIL: It was combined, Mr. President. (Laugh) [LB204A]

SENATOR GLOOR: Thank you, Senator Council. There are no members wishing to speak. Senator Council, you're recognized to close on your amendment. Senator Council waives. The question is, shall the amendment to LB204A be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB204A]

CLERK: 29 ayes, 0 nays, Mr. President, on the adoption of Senator Council's amendment. [LB204A]

SENATOR GLOOR: The amendment is adopted. [LB204A]

CLERK: I have nothing further on the bill, Mr. President. [LB204A]

SENATOR GLOOR: Seeing no members wishing to speak, Senator Council, you're recognized to close on LB204A. Senator Council waives. The question is the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

advancement of LB204A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB204A]

CLERK: 29 ayes, 0 nays, Mr. President, on the advancement of LB204A. [LB204A]

SENATOR GLOOR: The bill advances. Continuing with General File, Mr. Clerk. [LB204A]

CLERK: LB431 by Senator Hadley relates to healthcare. (Read title.) Introduced on January 14, referred to the Health Committee for public hearing, advanced to General File, I have committee amendments by the Health Committee pending, Mr. President. (AM407, Legislative Journal page 814.) [LB431]

SENATOR GLOOR: Thank you, Mr. Clerk. Senator Hadley, you are recognized to open on LB431. [LB431]

SENATOR HADLEY: Mr. President, members of the body, good afternoon. Historically, there have been three pillars of quality assurance in healthcare: first, self-regulation by hospital committees, such as credentialing, peer review, and utilization committees; second, malpractice litigation; and third, external regulation by licensure boards. Hospital oversight dates to the early part of the last century and reflects the professional commitment to and enjoyment of self-regulation. Malpractice litigation, on the other hand, is a counterpoint to professional self-regulation. As with all tort law, malpractice is intended to deter poor quality care by affixing economic sanctions onto practitioners who injure patients as a result of negligence. The third oversight mechanism, regulation by licensure board, also has a strong professional influence. Hospitals and other healthcare providers are now moving from the concept of quality assurance to quality improvement. Many people are familiar with the term "quality assurance," as it was a common term for many years. Quality assurance, or QA, was retroactive, retrospective policing and, in many ways, punitive. It often involved determining who was at fault after

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

something went wrong. This term is older and not as likely to be used today. We now use quality improvement. QI involves both prospective and retrospective views. It is aimed at improvement, measuring where you are and figuring out ways to make things better. It specifically attempts to avoid attributing blame and to create systems to prevent errors from happening. A key part of a quality improvement program is peer review. Peer review means the procedure by which the healthcare professionals evaluate the quality and efficiency of services ordered or performed by other healthcare providers. A peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other such type committees. Nebraska's hospital peer review law was enacted in 1971 and a separate governing peer review in outpatient settings was enacted in 1997. LB431 would replace these two laws with a single comprehensive peer review law. The bill defines the healthcare providers who may conduct peer review, the activities which constitute peer review, and the types of committees that can conduct peer review. LB431 also provides protections for individuals who participate in peer review activities and protects the confidentiality of such peer review records. The Nebraska Supreme Court has interpreted language pertaining to hospital quality and peer review privileges very narrowly. This makes it difficult for today's hospitals, with their various organizational structures, to develop a system for peer review that will receive protection and promote patient safety. For example, statute 71-2046 has been interpreted as providing the creation of only two committees to perform peer review functions in hospitals on a hospitalwide basis. These are a medical staff committee and a utilization committee. Investigations arising out of subcommittees or unit-based committees are not protected. I want to give you as an example of this, we have what we call critical access hospitals in Nebraska. These are generally small rural hospitals that are critical access because they allow access to healthcare by people living in rural areas. These are all very good hospitals but they're generally small. For example, Callaway District Hospital in Callaway has 12 hospital beds. The Nebraska Medical Center in Omaha has 635 beds. Gothenburg Memorial Hospital has 12 beds in Gothenburg. Nebraska Methodist Hospital in Omaha has 423

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

beds. Dundy County Hospital in Benkelman has 14 beds. Bergan Mercy Hospital in Omaha has 400 beds. I could go on and on. Also, we have areas with large departments. The Family Medicine Department at the University of Nebraska Medical Center has 49 physicians. The Internal Medicine Department in Creighton has greater than 125 physicians. The key point is that all of these hospitals are limited to the two peer review committees no matter how small or large they are. So in summary, the purpose of LB431 is to go...would consolidate and broaden the two current peer review laws and bring them into harmony with the Patient Safety Improvement Act. It also expands the type of committees and activities that come within the protection of the peer review laws. Courts have constructed the peer review laws narrowly, limiting the activities and scope of peer review. This legislation will enable hospitals and other healthcare providers to conduct a full range of quality assessment activities, including regular audits, utilization reviews, and root cause analysis and similar activities. LB431 does not change provisions in Nebraska current law which protects persons who participate in the peer review process. Providers and employees of medical facilities who participate in the peer review process are protected from civil liability for acts and decisions within the scope of their functions. Records generated in peer review may not be used in civil litigation. A very important key point is LB431 retains current protections for patients. It does not change the current law which protects the rights of patients to have access to medical records in civil lawsuits. Nebraska current peer review law guarantees that persons who bring lawsuits against medical providers may obtain all patient medical records, documents or information otherwise available from original sources. This provision is retained in LB431. Mr. President, I would ask for approval of LB431. [LB431]

SENATOR COASH PRESIDING

SENATOR COASH: Thank you, Senator Hadley. As the Clerk has stated, there are amendments from the Health and Human Services Committee. Senator Campbell, you are recognized, as Chair, to open on the committee amendments. [LB431]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR CAMPBELL: Thank you, Mr. President. The committee amendment to LB431 responds to a couple of concerns raised at the hearing. First, there were concerns the immunity provisions under the bill were overly broad and that physicians or other providers could be treated unfairly at the peer review process. The committee amendment amends the bill so that immunity could not extend to persons who act with malice in reporting or participating in the peer review process. Second, there were concerns expressed at the hearing that the definition of peer review committee potential would allow for multiple peer review committees within the health facility without proper authority and oversight. The committee amendment clarifies that peer review committees must be created by the governing board of the healthcare facility so that they cannot be established by providers or employees on an ad hoc basis. Finally, the committee amendment clarifies that in addition to individual providers and staff persons, administrators and board members for hospitals and other healthcare facilities may become involved in peer review activities if persons pursue an appeal after a peer review hearing. Therefore, the amendment adds officers, director, employees, and members of the governing boards to the persons who are protected if they participated in peer review activities. Thank you, Mr. President. [LB431]

SENATOR COASH: Thank you, Senator Campbell. Those wishing to speak on the amendment to LB431, Senator Gloor, you are recognized. [LB431]

SENATOR GLOOR: Thank you, Mr. President, and good afternoon, members. I wish to speak in favor of AM407, LB431. This is not just an important vote, amendment and bill, and I understand there are other amendments floating around out there. I think this is vitally important to the quality of care to individuals in healthcare institutions across the state of Nebraska. What we're talking about here relates to the opportunity for peers, physicians and others, to sit down and do a thorough analysis and critique of each other and the care they provide to Nebraskans. Apparently our statute has been determined to be too broad. It needs to be narrow in focus. That tweaking is, I believe, appropriate.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

But I have to tell you, having had firsthand knowledge, having sat in meetings where this occurs, that it is an important process and, surprisingly enough, it is, in any case that I have been involved in, an extremely effective process with physicians taking a look at a record and asking each other difficult questions about the care provided to those patients. This is done not because there is a lawsuit. This is done not because there has been a poor episode of care provided to a patient, although certainly that could occur. But this is usually done because, in a healthy organization, in a healthy profession professionals question each other to try and get to the bottom of why did you make the decisions you did and were those the best decisions. In any organization, having that in place is important. And in hospitals, and the bigger the hospital the more likely you are to have peer committees. If you're dealing with neurosurgeons who deal with issues around the brain and neurosurgery, it's fine. You don't want to include pediatricians in that peer review committee. That peer review committee should be made up of neurosurgeons, neurologists, perhaps other surgeons, orthopedic surgeons, people who have an understanding of the discussion that's going on there. To have a single peer review for an organization like the University of Nebraska Med Center or Creighton Med Center, Creighton University Med School, this would be almost...it would be ridiculous. You need to have multiple peer review organizations within those large, complex, tertiary organizations in order to actually accomplish the benefits of peer review. This really isn't a complicated process. It doesn't, I believe, in any way, shape or form open patient records up to some sort of privacy risk. All of that is in place. All that has been out there anyway. This is really an issue of professionals taking a look at the care provided by other professionals, and the end result is better quality of care for Nebraskans. And I encourage the advancement of both the amendment and the bill. Thank you, Mr. President. [LB431]

SENATOR COASH: Thank you, Senator Gloor. Senator Lathrop, you are recognized. [LB431]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon. I am

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

standing in support of LB431 with assuming we can get the amendment that I will next present after we adopt the committee amendments, and maybe take a moment if I can to put a sharper point on the comments of Senator Gloor and Hadley. I believe it's important for the process of self-correction in the medical community that they be permitted an opportunity to have peer review of the course of care taken with a particular patient. In order for that to be meaningful, people need to feel free to come forward to speak their mind, to say how they feel, to give opinions and judgments, and not fear that the process will be compromised by a plaintiff's counsel getting a hold of or getting copies of what's happening in that peer review process. This bill is intended to protect that process from discovery, which I think is vital for that process to be meaningful. If you think about the two things that are available to improve care, one is the fear that you will...the fear of a claim being made for your medical mistakes, which is really the civil liability side of it, and the other is review by your peers who will stand in some form of judgment and tell you that what you did violated the standard of care and how to make improvements. It is also a process that will permit the hospital, if appropriate, to say we don't want you practicing here anymore because this isn't the first time we've had a bad experience with the care that you are providing. I believe it's important, for that process to be meaningful, that the folks that participate in it should be shielded so that they can be candid in their discussions. And with that, I'll reserve the rest of my comments for my amendment, which I'll offer shortly. Thank you. [LB431]

SENATOR COASH: Thank you, Senator Lathrop. Seeing no other members wishing to speak, Senator Campbell, you are recognized to close on the committee amendment. Senator Campbell waives closing. The question is, shall the committee amendments to LB431 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Mr. Clerk. [LB431]

ASSISTANT CLERK: 34 ayes, 0 nays on the adoption of committee amendments, Mr. President. [LB431]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COASH: The committee amendment is adopted. Mr. Clerk, do you have another amendment? [LB431]

ASSISTANT CLERK: Mr. President, Senator Lathrop would offer AM1016. (Legislative Journal page 985.) [LB431]

SENATOR COASH: Senator Lathrop, you are recognized to open on your amendment, AM1016, to LB431. [LB431]

SENATOR LATHROP: Thank you, Mr. President and colleagues. Good afternoon once again. I offer AM1016, which, as you can see from your reading of the amendment on your computer, it changes one sentence in page 2 of the original bill as introduced. The section that it changes has to do with incident reports and risk management reports and whether they are discoverable. And this is where the two processes intersect. We have the process with peer review and we have a civil liability process, and the question is, to what extent can the civil liability process access information that's generated in the peer review process? As originally put together in the bill, incident reports and risk management reports were not available. This is a clarification to ensure that incident reports and risk management reports, what we're referring to are those documents that are created specifically for and collected and maintained exclusively for use by the peer review process. So if there is, for example, let's say that there is someone that had a...a doctor makes a medical mistake, gives somebody the wrong IV, and as a consequence they die or they're paralyzed or one of those terrible things that can happen in a medical mistake. If there is an incident report prepared that's just a general part of what they do, a copy is sent off to risk management, people are worried about lawsuits and this is provided to the risk management people, that's not protected. The only thing that will be protected, incident reports and risk management reports that will be protected, are those that are generated exclusively and used exclusively in the peer review process. If it's a...just because they send it over to peer review in addition to sending it over to risk management will not cloak it with the protection of LB431. It will only be those reports



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

which are prepared exclusively for and used exclusively by the peer review process. So once the peer review process shares a report, an incident report or a risk management report, with some other operation in the hospital or in the facility, it would then be available for discovery assuming that it's not work product, or if it is work product that you clear the hurdles that we already have in place to access another's work product. I believe I can say that this committee amendment enjoys the support of the bill's introducer, Senator Hadley, as well as those folks from the Hospital Association and the medical community who appreciate the distinction this amendment is intended to create. And with that, I would ask for your support of AM1016. Thank you. [LB431]

SENATOR COASH: Thank you, Senator Lathrop. Those wishing to speak on the amendment, AM1016, Senator Hadley, you are recognized. [LB431]

SENATOR HADLEY: Mr. President, members of the body, as Senator Lathrop so stated, I do stand in support of AM1016. I think it's an appropriate change. What we're trying to do is to make the peer review process work. We're not trying to make it a witch hunt. We're not going to try and hide things from a hospital or doctor proposal. So I do stand, in point, in favor of it. Just to give you an example, a New York Supreme Court case had this following sentence: It is the burden on defendant hospitals to establish the documents sought in discovery in a medical malpractice action were prepared in accordance with relevant statutes, and that's exactly what we're doing here, is we're being very specific in the statute as to which kind of documents are afforded, cannot be found through discovery and which ones can. I would support AM1016, Mr. President. [LB431]

SENATOR COASH: Thank you, Senator Hadley. Seeing no other senators wishing to speak, Senator Lathrop, you're recognized to close on your amendment. Senator Lathrop waives closing. The question is, shall the amendment to LB431 be adopted? All those in favor vote aye; all those opposed vote nay. Have all voted who wish? Record, Mr. Clerk. [LB431]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

CLERK: 32 ayes, 1 nay, Mr. President, on adoption of the amendment. [LB431]

SENATOR COASH: The amendment is adopted. [LB431]

CLERK: I have nothing further on the bill, Mr. President. [LB431]

SENATOR COASH: Returning to discussion on LB431, there are no members wishing to speak. Senator Hadley, you are recognized to close on LB431. [LB431]

SENATOR HADLEY: So that we may have brevity, I would ask for your green vote on LB431 as amended. [LB431]

SENATOR COASH: Thank you, Senator Hadley. The question is the advancement of LB431 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB431]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB431. [LB431]

SENATOR COASH: LB431 does advance. Mr. Clerk. [LB431]

CLERK: Mr. President, LB558. It's a bill by Senator Nordquist that relates to schools. (Read title.) Introduced on January 19 of this year, referred to the Education Committee for public hearing, advanced to General File. I do have committee amendments, Mr. President. (AM728, Legislative Journal page 847.) [LB558]

SENATOR COASH: Senator Nordquist, you are recognized to open on LB558. [LB558]

SENATOR NORDQUIST: Thank you, Mr. President and members. LB558 allows and encourages the development of collaborative focus schools and programs within the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

learning community. Focus programs are schools, as established in statute, are intended to have their enrollment reflect, as nearly as possible, the socioeconomic diversity of the student body of the learning community. They also have a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum. Currently, statute requires that one primary school district shall maintain legal, financial, and academic responsibility for such program to be eligible for the focus school and program allowance. Under this bill, LB558, two or more school districts could come together on a collaborative basis to develop focus schools or programs which will promote the continuation and expansion of focus schools. With the Education Committee's amendment, the collaboration must clearly be spelled out in detail in the interlocal agreement. Current statute allows districts to apply for capital funds from the learning community to cover up to 50 percent of the building or renovation costs for the creation of a focus school. However, should that school fail within ten years, the school district must repay the funds with interest received from the learning community. Allowing multiple districts to form interlocal agreements to share this burden would encourage the formation of more focus schools. The financial burden and risk to a single district would be reduced. Collaboration also brings a breadth of experience and knowledge that benefits students and teachers alike across multiple districts. Collaboration would lead to greater sharing of best practices and innovation in education between the districts. Finally, the goal of focus schools in Nebraska is to promote diversity. In order to be successfully integrated, focus schools need the promotion of multiple districts so that families are comfortable embracing change. Currently, there are collaborative projects perfectly positioned to become focus schools or programs that exist across the metro in the collaborative approach. We heard about some of those at the hearing. We received a letter from UNMC, which is looking at bringing together multiple districts to study medicine. The Henry Doorly Zoo is looking at life science programs. And there are, additionally, several Fortune 500 companies in Omaha that have expressed interest in collaborative projects to create focus schools or programs. However, these projects will not be able to develop into focus schools without the availability of the collaborative model because collaboration, not competition, is at

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

their core. I ask for your support in allowing the collaborative focus school model to move forward. LB558 with the committee amendment was advanced out of the Education Committee in a unanimous 8 to 0 vote. Thank you, Mr. President. [LB558]

SENATOR COASH: Thank you, Senator Nordquist. As the Clerk has stated, there are committee amendments from the Education Committee. Senator Adams, as Chair of the committee, you are recognized to open on the committee amendments. [LB558]

SENATOR ADAMS: Thank you, Mr. President. Members of the body, what the committee does are two things and relatively simple things. First of all, if we pass this bill what we are doing is allowing in law for multidistrict focus schools, which already exist, by the way, in the learning community, but we would be authorizing their existence and saying, in effect, that through inter cooperation agreements, interlocal cooperation agreements, you can have them. But what the amendment does is to say, all right, if we're going to have multidistrict focus schools then in that interlocal agreement it's got to spell out legal responsibility, who has the legal responsibility in that focus school. If you have two or three districts in it, who's carrying the legal responsibility? Who's handling the financial responsibilities? Those things have to be spelled out in the agreement. The other thing that it does, let's say, for instance, that we have a collaborative focus school between...well, let's use the one that we've been talking about a lot, the Underwood Hills School, where we had Elkhorn, we have OPS, and we have Westside. In this language under the amendment, if those three schools went together and formed a focus school and a student from Papillion wanted in and Papillion is not part of the interlocal agreement, then that student would in effect be assigned to become a student in one of those other districts. So the Papillion student getting in would no longer be a Papillion student but belong to one of the schools in the interlocal. That's the amendment--the assignment of students and the clarity that the interlocal agreement has to specify responsibilities. Thank you, Mr. President. [LB558]

SENATOR COASH: Thank you, Senator Adams. Those wishing to speak on LB558,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

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Senator Pahls, Price, and Fulton. Senator Pahls, you're recognized. [LB558]

SENATOR PAHLS: Thank you, Mr. President, members of the body. As I take a look at what we have before us, I'm going to talk maybe to the amendment and also the bill, those who were proponents, basically, all were from Underwood Hills Focus School. And I can see why they did not or do not want to lose their school, because I can remember several years ago when we had the...with Class I schools. You have a lot of people who come in front of the committee and support the idea that would save them. The ironic part of this, and I'm going to have to listen some more, I'm not trying to disrupt the bill, but I think the ironic part of this, we developed a learning community and this focus school between Elkhorn, Westside and Omaha, occurred before we had the learning community in place. So it shows you the value of these interlocal agreements because this happened before the learning community was established. And now I see where I think Elkhorn did pull out so that does leave a couple of the other school districts in jeopardy, so I understand the rationale of...I think I do anyway, of this bill and I'm not disputing that. I'm just bringing up the point that this focus school was in place. Some of the things that we stood on the floor and said, the benefits of having a learning community would actually be something like what those three districts came together before we happened to have a learning community in place. And as you can see by...if you look at the proponents, you can see the parents were really excited about that. Someday I hope that any of you, your school is not at risk but you can stand up and the parents who send their children to schools in your district would be willing to come in front of the committee and say we really enjoy what's happening in our school, not because it's a focus school. But that's where we need to go. We eventually need to get to the place where every parent will stand up and fight to keep their school alive. I'm talking about in any Omaha school district, any Lincoln school. We need to have that commitment. I do believe it would happen in most cases. I see the need for focus schools. I'm rather intrigued because they said they're going to have a different type of curriculum and different teaching strategies. I've not had the opportunity to go to any of these focus schools that people are talking about, but I dare say a lot of those

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

strategies, teaching strategies, are happening right now throughout the state of Nebraska, and some of that unique curriculum is also happening. Now I know when you involve the zoo and some of those, you are really what I call stepping outside the box, which I appreciate. Again, I think we ought to focus on all schools, not just focus schools. I think we ought to demand the same of every building, the same expectations that we are saying these focus schools need. I'm also a little bit...I would be interested to see how the financial...how this will affect all schools in the state when we start moving some of these monies around. I don't know if that will have a significant impact on the... [LB558]

SENATOR COASH: One minute. [LB558]

SENATOR PAHLS: ...thank you...on the overall TEEOSA. I do not know if that's going to happen. But I like the idea of keeping the concept of focus schools alive, but my overall goal would be that every school would be one that parents and students would want to go to, not just for diversity, because it is a good school. Thank you. [LB558]

SENATOR COASH: Thank you, Senator Pahls. Senator Price, you are recognized. [LB558]

SENATOR PRICE: Thank you, Mr. President, colleagues, good afternoon. I have some questions on what we're trying to do here and I would like to have the record reflect what the intent of the body is, what this legislation will do in the event a few different things happen. I was wondering, would Senator Adams yield to some questions? [LB558]

SENATOR COASH: Senator Adams, will you yield? [LB558]

SENATOR ADAMS: Yes, I will. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR PRICE: Thank you very much, Senator Adams. As we've spoken about earlier, what happens here? We have a benefactor helping to fund the school, which kind of replaces those schools that were in that local agreement that pulled out. What happens when the private monies aren't there anymore? [LB558]

SENATOR ADAMS: Well, you raise a good question and that's going to be up to...if we have a primary school district or a combination of school districts, however this is formed, and you've got the outside money coming into it, that goes away, it's going to be up to that school district or those school districts to decide how they're going to handle the cost. But I would tell you that that money currently, by statute, is exempt from GFOE when we calculate state aid. So let's say that the...I'm taking up too much of your time. I'm sorry. [LB558]

SENATOR PRICE: Oh, no, Senator Adams, I appreciate that because I'm unable to fully articulate the questions I have because there's a question about the 10 percent we had spoke about earlier whereas a certain amount of TEEOSA money go into this and that's all they're going to get with that 10 percent. So I would like you to take the time to elaborate on the mike about those subject matters, please. [LB558]

SENATOR ADAMS: All right. The 10 percent we're talking about is an allowance, remember. And here's a little state aid 101, I apologize, but here's a difference between an allowance and an adjustment. An adjustment is new money that comes in annually on top of your calculated basic funding. This is not that. It is an allowance. And what the allowance does is to take money that's already in the pot for the schools that are in the array and those schools that have the allowance, what's going to happen is they're going to get some of that money and schools that are in that same array that don't qualify for the allowance don't get it. So what we're really doing, in the simplest way of telling you, you are shuffling money around within an existing bucket that has ten schools in it. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR PRICE: Thank you, Senator Adams. Now is there a chance, Senator Adams, that within that array that if there's a school that's eligible for some of that money and now this new need comes up that those monies will be removed from a school that doesn't have a priority or...and they wouldn't get any or is it where we "peanut butter" it and everybody gets a little less because now you have another mouth you're feeding? [LB558]

SENATOR ADAMS: The last thing you said is correct. The schools, not all schools, just the schools in the array will have a little bit less. [LB558]

SENATOR PRICE: Okay. Are the schools in the array all the schools within the learning community? [LB558]

SENATOR ADAMS: No. [LB558]

SENATOR PRICE: Okay, great. [LB558]

SENATOR ADAMS: Arrays are determined by school size so, for instance, D.C. West and South Sarpy would not be in the same array with Papillion or Bellevue. [LB558]

SENATOR PRICE: Okay, great, and I appreciate that, Senator Adams. I hope that the members of the body were listening to this conversation. I know it's technical and tedious, but what we just heard is if monies from outside dry up, well, we're back to square one where we're going to have another hearing from people who are looking for money to keep their school open, okay? So that's one issue. And the other issue is that within an array those schools who are currently getting a certain level of funding could see that that funding has decreased because they have a new entity, a new requirement, I guess would be the better word there, we have a new requirement levied against the same pot of money,... [LB558]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COASH: One minute. [LB558]

SENATOR PRICE: ...that pot of money. Thank you, Mr. President. So...and again, Senator Adams, I appreciate you helping me out with these questions and I'd also let the body know, and as the other speakers have said, we didn't need a learning community to do this, that, what we had before. They formed interlocal agreements. They had these things existing before the learning community. We formed the learning community. Now the learning community is going to assist. And my question is and I had told Senator Nordquist earlier is my concern is now are more and more programs that weren't involved in the learning community process going to say, oh, we found a funding source, let's jump into the learning community bucket and grab more resources because our resources are getting depleted? So I will listen to the debate intently and I encourage all of you to do the same. Thank you. [LB558]

SENATOR COASH: Thank you, Senator Price. Senator Fulton, you are recognized. [LB558]

SENATOR FULTON: Thank you, Mr. President. Would Senator Nordquist yield to a question or two? [LB558]

SENATOR COASH: Senator Nordquist, would you yield to a question from Senator Fulton? [LB558]

SENATOR NORDQUIST: I'd be happy to. [LB558]

SENATOR FULTON: Okay, Senator, this is my own reading of the bill and the amendment. I come to a conclusion and it's a conclusion which is confusing to me and in talking with you off the microphone it seems that this could all...this could be cleared up, at least for me. Perhaps others are sharing in my confusion. So the green copy of the bill what you propose to strike are the words "pursuant to the diversity plan

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

developed by the learning community coordinating council." [LB558]

SENATOR NORDQUIST: Uh-huh. [LB558]

SENATOR FULTON: And my question is that the whole idea behind the learning community was, among other things, to promote diversity between the districts. And so it seems to me or it appears to me that we are striking so these...a focus program, focus school or magnet school could be created regardless of the diversity plan developed by the learning community coordinating council. So if I'm in error, if this comes into another place in the bill, then I just leave it to you to set me straight. So if you could, Senator. [LB558]

SENATOR NORDQUIST: Yeah, sure. Well, I think we need to look at subsection (1) and (2) there. Subsection (1) says they can do it. Subsection (2) says if you want the allowance you have to do it pursuant to the diversity plan, essentially. So if you want the allowance, you have to come to the learning community, make sure it fits within the coordination of what they're trying to do. [LB558]

SENATOR FULTON: Okay. So if one were to do this outside the purview of a diversity plan or the diversity plan then they would not be able to receive any assistance through TEEOSA. [LB558]

SENATOR NORDQUIST: That would be correct. [LB558]

SENATOR FULTON: So is that a concern? I guess if the idea is... [LB558]

SENATOR NORDQUIST: Yeah. [LB558]

SENATOR FULTON: Are you concerned about somewhere down the road a magnet school or focus program or focus school being put forth outside the purview of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

diversity plan? Is that a concern down the road? [LB558]

SENATOR NORDQUIST: Oh, I think the one focus school that we did have an operation was up and operating before the diversity plan, before the learning community came in place and was operating independent of that. So I don't think that would be an issue. I just think if there are...if there is an impact with the allowance, that it should fit within the coordinated efforts of the learning community. [LB558]

SENATOR FULTON: Okay. Okay, thank you, Senator Nordquist. That does clear it up somewhat for me. My own position on when we passed that bill some years ago for the learning community, I didn't support it, but at the same time I didn't get up and filibuster and scream and yell because I do...I hope that it works. I just didn't...I didn't think that it would. So I hold that hope out. It just seemed odd to me that we're moving in a direction contrary to that which we put forward as a reason to vote for the learning community in the first place. But as I understand it, so long as one wants to participate in the money that's afforded school districts through our TEEOSA formula, then one would still have to do so pursuant to a diversity plan. I think I have...by Senator Nordquist, I think we have it. So thank you, Mr. President. [LB558]

SENATOR COASH: Thank you, Senators Fulton and Nordquist. Senator Howard, you are recognized. [LB558]

SENATOR HOWARD: Thank you, Mr. President and members of the body. As a member of the Education Committee, I was there the day that the parents and students came in to testify about how important this focus school, the Underwood School, was to them, to their children, and I was really moved by their dedication and commitment to their children's education. It was just the very thing that we all look for and that we all want in terms of parent commitment, parent involvement, and the children's interest in going to school. I really felt that we needed to do whatever was possible, whatever we could to support this, to be there for these parents that have made this commitment.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

These people stated that they were willing to provide the transportation for their children to attend this school, and if the school was relocated they would follow through and make sure that their children were at the new location. But it was so important for them to have this educational opportunity for their students. And I appreciate Senator Nordquist following through and making this bill his priority bill so that these families have this opportunity. I think this is the right way to go about this. I was here a number of years ago when we passed the learning community bill and I remember what a struggle that was and how long we worked on it, and at the time I had the feeling we were molding something to sell to the community to tell the parents that we really knew what was right for them and we had the answer. This time it's the parents coming forth and saying this is working, this is working for our children. And as much as we were there for the learning community, we certainly need to be there for the parents in this situation. Thank you, Mr. President. [LB558]

SENATOR COASH: Thank you, Senator Howard. Those wishing to speak: Senators Nelson, Fischer, Campbell, and others. Senator Nelson, you are recognized. [LB558]

SENATOR NELSON: Thank you, Mr. President, members of the body. Underwood Hills School is in my district and I visited several times and it's a great school, a great focus school, and I do have some questions, though, perhaps first for Senator Adams and then Senator Nordquist. So would Senator Adams yield? [LB558]

SENATOR ADAMS: Yes, I will. [LB558]

SENATOR NELSON: Thank you, Senator. It's been stated that this focus school was originated by Elkhorn and Westside and OPS before the learning community came into effect. Does the learning community now, because of that, do they contribute any funds? Is there any allowance at the present time from the learning community? [LB558]

SENATOR ADAMS: No. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NELSON: All right. So with the amendment here, if the focus school there at Underwood Hills is able to continue, if they follow a diversity of the learning community then they would be able to get some funds from the learning community this allows? Do I understand that correct? [LB558]

SENATOR ADAMS: Almost. What has to happen here for a school like Underwood Hills, if it were going to continue, is that first of all we would need to change the statute which would allow for a multidistrict focus school. Right now the statute says there has to be one school district as a focus school or you don't get the allowance. The statute would say if you have a multidistrict you could get the allowance and they would have to meet the diversity plan levels. Now the money wouldn't come from the learning community. It comes...it's an allowance within the array of those...of attend school. [LB558]

SENATOR NELSON: All right, so that's one of the purposes of this bill before us, is it to change that? [LB558]

SENATOR ADAMS: It is to allow a multidistrict focus school, if it meets the diversity plan, to get the allowance, yes. [LB558]

SENATOR NELSON: The other purpose of the amendment here is to permit someone, as you said, in Papillion, for instance, a student there to transfer into one of the three districts so they could attend the focus school. [LB558]

SENATOR ADAMS: Correct. [LB558]

SENATOR NELSON: Is that within or outside the learning community? [LB558]

SENATOR ADAMS: That...you know, that, it's really outside of it because in a sense it's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

going to be between that school district and what the statute permits. [LB558]

SENATOR NELSON: All right. [LB558]

SENATOR ADAMS: So if the student from Papillion says, I want to go to Underwood Hills, then that student, if Papillion is not part of the interlocal agreement that created the Underwood Hills school, would become a student of one of the three districts or four, whatever the interlocal agreement has created. [LB558]

SENATOR NELSON: All right. As I recall, it was the selection process for the focus school made up of the three districts. And the students came from within those three districts but it was very selective. A lot of people applied, but they could only take a certain number. Now is a student from Papillion going to know in advance that they're going to be able to attend that focus school or are they going to, at their peril, move into another district and then be part of the selection process? [LB558]

SENATOR ADAMS: It's really not, they would know in advance, it's a lottery system. [LB558]

SENATOR NELSON: With a lottery system. [LB558]

SENATOR ADAMS: Correct. [LB558]

SENATOR NELSON: All right, all right. Thank you, Senator Adams. Senator Nordquist, would you... [LB558]

SENATOR COASH: Senator Nordquist, would you yield? [LB558]

SENATOR NORDQUIST: I'd be happy to. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NELSON: Senator Nordquist, I appreciate you bringing this bill. This is kind of a deal, what I would call follow the money. The focus school has been very expensive. [LB558]

SENATOR NORDQUIST: Um-hum. [LB558]

SENATOR NELSON: I think it's cost each one of the districts that have participated about \$800,000 a year, if I'm not correct. And that's the reason that Elkhorn pulled out. I guess, that made it unsustainable for Westside to be part of that and OPS. And it would be going down the tube if we didn't get these special funds from an anonymous donor, is that correct? [LB558]

SENATOR COASH: One minute. [LB558]

SENATOR NORDQUIST: Well, actually, on the cost it is very close to the statewide average and per pupil cost, including transportation. But Westside and Elkhorn, Westside testified in support of the bill at the hearing and said, basically, this won't save Underwood Hills because they're just feeling that they have to contract and they have eight staff there right now. And they just don't feel that they can maintain those staff there at the time they're pinching down on the rest of their faculty. So you're right, now going forward there is anonymous funding, partly because of transition costs. But the ongoing costs of the program isn't much more than the statewide average. [LB558]

SENATOR NELSON: Well, now there was a cost for the renovation of the Underwood Hills school initially, that was paid by the three school districts that participated. [LB558]

SENATOR NORDQUIST: Yeah, that's right. [LB558]

SENATOR NELSON: So if they're going to operate outside the learning community and they're going to continue this or other districts are going to form... [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR COASH: Time, Senators. [LB558]

SENATOR NELSON: Thank you very much. [LB558]

SENATOR COASH: Senator Fischer, you are recognized. [LB558]

SENATOR FISCHER: Thank you, Mr. President and members. Senator Nelson alluded to follow the money. And, I guess, that's my concern on this bill. The comment was made that money for this focus school cannot be gotten right now from TEEOSA. If I could, Mr. President, would Senator Adams yield to some questions please. [LB558]

SENATOR COASH: Senator Adams, would you yield? [LB558]

SENATOR ADAMS: Yes. [LB558]

SENATOR FISCHER: Thank you, Senator. I'm just going to go through some things and then maybe you can respond to them later. But you know, if a district, whether it's a learning community or individual districts, school districts, if they can't get funding from TEEOSA, aren't there other sources of funding out there for schools? [LB558]

SENATOR ADAMS: Well, there's property tax and in this case you've got people within a community that want to help. [LB558]

SENATOR FISCHER: Correct. And there was an \$800,000 donation by an anonymous donor to keep this school open. I believe, the OPS superintendent said that that would keep it open for another three years. Is that correct? [LB558]

SENATOR ADAMS: That's...I believe that's right. I don't know the details of what...his financial comments. [LB558]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR FISCHER: I'm just reading from a couple of news articles that were in the Omaha World-Herald about that. But as I look at the fiscal note, at the bottom of your fiscal note, I think we need to be concerned about this. The bill appears just to make the Underwood Hills Focus School, which is in Omaha, eligible for that focus school allowance in the TEEOSA aid calculation. Is this legislation just geared for that one school? Senator Pahls, I think, mentioned that the people who came to testify, for the most part, and I looked at the committee statement, they were from that school. [LB558]

SENATOR ADAMS: Is it aimed just at them? No. [LB558]

SENATOR FISCHER: Okay. You...do you see other focus schools starting when we may have redistribution of funding within the learning community and we've already seen one school district pull out of this focus school? [LB558]

SENATOR ADAMS: You know, I think it's...whenever you...if you're going to create collaborative focus schools and if there are going to be players within the array that don't want to contribute, then you'll...yes, yes. They're going to...that money is going to be redistributed to those who do. Are there going to be more focus schools? I don't know. I'd like to think that there may be. [LB558]

SENATOR FISCHER: If that money is moved around within the learning community, will the learning community, will the needs of the learning community increase and will the learning community then receive more money from state aid to schools? [LB558]

SENATOR ADAMS: No, I don't think because school district A is not in the focus school and their basic funding is calculated without the allowance and somebody else that's in the focus school gets that allowance that that suddenly increases their needs to come back and say, hey, we lost 900 bucks a kid, make that up. It doesn't work...the allowance doesn't work that way. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR FISCHER: How will they be able to make that up then? Will they need to raise their property taxes within the learning community in order to make this up if more schools are formed? [LB558]

SENATOR ADAMS: No, not necessarily. What we're simply saying, like we do with any allowance, before we inflate that two-year-old data we're going to pull the allowances out of GFOEs and then inflate, put the ten schools in the array, determine what their basic funding level is and then if we have a school that's qualified for the allowance, then that comes back onto them. [LB558]

SENATOR FISCHER: Okay. Maybe I need to then move on from the allowances on it. [LB558]

SENATOR COASH: One minute. [LB558]

SENATOR FISHER: If I could ask you, what's going to happen to the averaging adjustment if this bill is passed? [LB558]

SENATOR ADAMS: You know, that's...I...you have raised an interesting question, Senator. You know, one of the things about the averaging adjustment is that it creates some unpredictability. And when you consider that it is an average, that means somebody is always going to be below the average. And so in an array, if you push somebody up and the average goes up, somebody is below the average, then those schools below the average technically could potentially pick up some averaging adjustment money to pull...to raise them up. [LB558]

SENATOR FISCHER: And that wouldn't just be within the learning community would it, Senator? [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR ADAMS: No, no, that could be statewide. [LB558]

SENATOR FISCHER: So this bill isn't just a simple little bill that is going to allow the formation of focus schools within the learning community is it, Senator? [LB558]

SENATOR ADAMS: You know, I don't know that...no... [LB558]

SENATOR COASH: Time, Senators. [LB558]

SENATOR FISCHER: Thank you. [LB558]

SENATOR COASH: Senator Campbell, you are recognized. [LB558]

SENATOR CAMPBELL: Thank you, Mr. President. And I'm going to continue the discussion that I think Senator Nelson and Senator Fischer, because I'm trying to also understand the finances of this. Would Senator Adams entertain a question please? [LB558]

SENATOR COASH: Senator Adams, would you entertain a question from Senator Campbell? [LB558]

SENATOR ADAMS: Yes. [LB558]

SENATOR CAMPBELL: Senator Adams, I'm going to kind of continue on the finances because I'm trying to understand that. And I want to go back to the example that you used. So if a student by lottery got accepted and went to the focus group, the student's original school would, if they were in the array, would lose, I mean, then the money is spread more thinly among the array. And would they not also then...they'd also lose that property tax, right? [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR ADAMS: Not the property tax. They would lose the student in their ADM count, though, their formula student count. [LB558]

SENATOR CAMPBELL: Ah, okay. [LB558]

SENATOR ADAMS: They'd have one less student. [LB558]

SENATOR CAMPBELL: So that's how they're going to lose. [LB558]

SENATOR ADAMS: Um-hum. [LB558]

SENATOR CAMPBELL: But they would lose both ways, conceivably they could. [LB558]

SENATOR ADAMS: Yes. [LB558]

SENATOR CAMPBELL: At what point, and I listened very carefully because my question was somewhat similar to that. What if the focus schools began to really proliferate, at what point, at what point is that impact really going to start working on the array and the amount of money that we put into those? [LB558]

SENATOR ADAMS: I guess, I don't...I'm sorry, Senator. I'm not quite sure how to answer your question. [LB558]

SENATOR CAMPBELL: Well, if we have more and more focus schools, will not the...will not...to support them, well, now we need it...the money be even more thinly distributed among the array? [LB558]

SENATOR ADAMS: Well, I mean, you may have a school that loses some students to the focus school, which impacts that aid. That doesn't mean that it costs the state more.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

They've lost students. [LB558]

SENATOR CAMPBELL: Okay. [LB558]

SENATOR ADAMS: And again, we are shifting around, an allowance is a shifting of money that's already there is basic funding. [LB558]

SENATOR CAMPBELL: Okay. And I'm sure my questions were more geared toward what Senator Fischer was also trying to ask and Senator Nelson. So I'll continue to listen. But thank you very much for answering the questions. Thank you, Mr. President. [LB558]

SENATOR COASH: Thank you, Senators. Those wishing to speak: Senators Nordquist, Price, Council, and Nelson. Senator Nordquist, you are recognized. [LB558]

SENATOR NORDQUIST: Thank you, Mr. President and members. I think it's important for us to remember here that we're not creating a new allowance, we're just simply changing the definition of the allowance and to allow for collaborative model focus schools as opposed to focus schools where there is one primary district. So this is not new. This was effective July 18, 2008, the statute, for creating this allowance in the calculation is in 79-1007.05, if you're interested in seeing how this allowance is calculated for focus schools only within the learning community. Secondly, on the point of Underwood Hills, I want to clarify that I did not introduce this bill for Underwood Hills. It was introduced before any news broke of Underwood Hills becoming a single member district as the two partners, Westside and Elkhorn, pulled out of it. Really, the learning community has only received an application for a single member district because they did not think that the finances were in place to move forward with that one. So they did not fund it at that time. And in the minutes of the learning community meeting, which my staff reviewed and then afterwards I was also approached by several members of the learning community with their concern that we need to have collaborative model focus

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

schools in the metro area to bring districts and bring students together to meet the ultimate goals of the focus schools and of the learning community as a whole. So now moving forward with Underwood Hills, actually, it's likely that if they were approved by the diversity plan, they are now a single district focus school. So they would qualify under the current definition and receive the allowance because now they are only...they have a primary district so they would fall under the current definition. So this really, as that kind of evolved, didn't really change that much for them. We're talking about going forward and allowing this allowance to be in place for multimember collaborative district focus schools. Thank you. [LB558]

SENATOR COASH: Thank you, Senator Nordquist. Senator Price, you are recognized. [LB558]

SENATOR PRICE: Thank you, Mr. President, members of the body. So the question becomes a little more well defined but still I'm trying to make sure I understand all this. Would Senator Adams be gracious enough to yield to yet another question? [LB558]

SENATOR COASH: Senator Adams, will you yield? [LB558]

SENATOR ADAMS: Yes. [LB558]

SENATOR PRICE: Thank you very much, Senator Adams. So we have the school and the agreements and they come in. And we have the prototypical mythical student from Papillion who would like to go, goes through the lottery and is accepted at this school. Who pays the transportation costs for the student from Papillion to go to a focus school in the farthest reaches of a learning community? [LB558]

SENATOR ADAMS: Well, that student from Papillion, under this language and the amendment, would become a student of one of the school districts that's in that interlocal agreement. And one of those school districts would be responsible for that

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Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

transportation. [LB558]

SENATOR PRICE: So if a student is accepted from South Sarpy and gets up in the interlocal agreement, they would become a student, for purposes of this discussion, of Omaha. And OPS would then be responsible for transporting the student from South Sarpy up into Omaha. [LB558]

SENATOR ADAMS: That's correct. [LB558]

SENATOR PRICE: Would those funds come from the learning community or, I mean, I'm trying to make sure I... [LB558]

SENATOR ADAMS: Those would come from OPS. [LB558]

SENATOR PRICE: So those aren't learning community funds for transportation purposes? [LB558]

SENATOR ADAMS: No. [LB558]

SENATOR PRICE: Okay, great. I appreciate that because my next question, I think, that leads in, you know, I have a school that has a diversity plan. We're working really hard for a diversity plan and getting to the desired numbers there. And now I have a student who moves out. What if that hurts that school's diversity plan numbers? I mean, I'm opting out and I've finally got that...it's kind of like when we do redistricting, we finally got balance, we've got the right number, but this student wants to go to a focus school and now it's going to throw that district or going to throw that school out of whack maybe. Is that a part of the consideration in allowing the student to move up into that other school? [LB558]

SENATOR ADAMS: No, I don't think it would be. If the student and their parents decide

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

that they would like to go to the focus school, they put their name into the lottery and they're accepted and choose to go then, using your scenario then, the school that they left behind would have one more seat in capacity and could take a student from someplace else that might further contribute to the diversity of that school. [LB558]

SENATOR PRICE: Okay. They could. But, I guess, in closing...thank you. I guess, I'm understanding the losing school really doesn't have much say in any of this. When a student gets accepted to the focus school, they're accepted. And, as Senator Campbell brought up and others, there could be a chance where that school is losing multiple ways. So, I guess, that's just the way it is. And we'll listen to more debate on it. I was wondering, would Senator Nordquist yield to a question, please. [LB558]

SENATOR COASH: Senator Nordquist, would you yield? [LB558]

SENATOR NORDQUIST: Yes. [LB558]

SENATOR PRICE: Thank you, Senator Nordquist. Earlier, you had said something about the amount of money per student wasn't much different than the state's amount of money per student within that school. [LB558]

SENATOR NORDQUIST: Yeah. [LB558]

SENATOR PRICE: Can you tell us...can you make that a...can you tell us what that number actually is, what the schools is and what the state average is. [LB558]

SENATOR NORDQUIST: Let's see here. I have the...in 1.2, Underwood Hills there it's gone down tremendously since the first year as they started up. Obviously, running a whole school with only a fifth grade class as opposed to a sixth and seventh, obviously, it gets cheaper per student. State average is \$10,656, Underwood Hills was \$10,800, looking around the metro area it ranges from a low of \$8,700 in Gretna to a high of



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

\$13,000 in D.C. West or actually... [LB558]

SENATOR COASH: One minute. [LB558]

SENATOR NORDQUIST: ...\$14,200 in South Sarpy. So it's right in the meat of the curve within the metro area as well, within learning community schools. [LB558]

SENATOR PRICE: All right, thank you very much, Senator Nordquist. I just wanted to make sure we had that down. The other thing I'd say, ladies and gentlemen, and we did hear that we're not creating a new allowance. But what we are doing is we're making...we are creating a new requirement to be fulfilled, same amount of dollars, another requirement to be fulfilled. And I'm wondering how pragmatic that is and where this leads us to the future, as other members have said about new focus schools opening up and a limited pot of money. At what point in time is it enough? And do we then have to go back in and make an adjustment to the formula so that more money is added into that or whatever may be needed? I'm not sure on that one but I will be listening to the debate to learn more. Thank you very much, Mr. President. [LB558]

SENATOR COASH: Thank you, Senator Price. Those wishing to speak: Senators Council, Nelson, and Pahls. Senator Council, you are recognized. [LB558]

SENATOR COUNCIL: Yes, thank you, Mr. President. I rise in support of AM728 and the underlying bill, LB558. As a member of the Education Committee, I, too, had the opportunity to hear the presentation on LB558. And I was particularly taken by the comments in favor of LB558 from members, districts from the learning community council. I think it's significant that the emphasis and the focus as reflected in AM728 is on the development of focus schools or magnet schools that are consistent with the learning community council's diversity plan. I believe one of my other colleagues made reference to the fact that the original learning community council bill, that one of the objectives was to improve the diversity in the school districts within the Omaha

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

metropolitan area. Certainly, Underwood Hills is a brilliant example of what could result from these types of focus schools. And if Senator Nordquist would yield to a question... [LB558]

SENATOR COASH: Senator Nordquist, would you yield? [LB558]

SENATOR NORDQUIST: Yes. [LB558]

SENATOR COUNCIL: And under LB558, I think, I mean, in its most simplistic form is that it will permit school districts in the learning community council to collaborate further. Am I correct in my analysis? [LB558]

SENATOR NORDQUIST: Absolutely, they're allowing to collaborate on focus schools and move forward with that, which is, I think, is needed to fulfill the mission of the learning community. [LB558]

SENATOR COUNCIL: Okay. And I think that's so important because one of the reasons that we have a learning community council is because of the fact that we have this number of school districts in the greater metropolitan area. And since they were or were fast becoming islands among...into themselves and we were having these issues, not just finance issues but diversity issues, and it's my understanding that that's why the learning community council legislation has an emphasis on a diversity plan and the need for a diversity plan. Senator Nordquist, I have one other question. During the hearing and since the hearing there were some concerns expressed, and specifically with regard to Underwood Hills and the wonderful program offered there was that, well, there's only one Underwood Hills. And what about the opportunity for other youngsters within the learning community council to experience this wonderful educational program. Correct me if I'm wrong that one of the by-products of the enactment of LB558 is the opportunity to create more such focus schools and thus provide opportunities for more children in the learning community council to benefit from the model that's been created

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

at Underwood Hills. [LB558]

SENATOR NORDQUIST: That's right. I think there are a number of unique opportunities available right now, ready and waiting in the learning community to move forward with collaborative model focus schools, certainly the Med Center has expressed interest, the zoo, Fortune 500 companies that could really benefit the entire metro area and the students of the entire metro area well into the future. [LB558]

SENATOR COUNCIL: Okay. And because if we... [LB558]

SPEAKER FLOOD PRESIDING

SPEAKER FLOOD: One minute. [LB558]

SENATOR COUNCIL: Thank you. If we're relying solely on the competitive model, am I correct in my belief that we would then be limiting the opportunities for students to participate in programs such as Underwood Hills because it places, some may say, an undue burden on one school district to bear all of the legal and financial and personnel requirements associated with such a focus school? [LB558]

SENATOR NORDQUIST: Certainly. And with one district leading the charge there certainly is a lot more risk for them to start a program like this and to try to draw students in versus the sharing of that risk. Certainly, I think a learning community is all about collaboration. And I think that's what this bill would move us forward with. [LB558]

SENATOR COUNCIL: Well, thank you, Senator Nordquist, and for confirming my belief. It strengthens my support for LB558 as amended. [LB558]

SPEAKER FLOOD: Time, Senator. Thank you, Senator Council. Senator Pahls, you are recognized. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR PAHLS: Thank you, Mr. President, members of the body. You know, we are focusing on focus schools. And I do have a question that I'd ask...I know Senator Nordquist is busy right now. But as I see it, we have focus schools, we have focus programs and we have magnet schools. And I'm just curious because a focus program is a program within a regular school. So this could become somewhat complicated. And I'm curious to what extent, because again, as I said earlier, I would like to have every one school become a focus school, not necessarily changing it curriculum but having parents engaged. But the question I have for Senator Nordquist,... [LB558]

SPEAKER FLOOD: Senator Nordquist, will you yield to a question from Senator Pahls? [LB558]

SENATOR NORDQUIST: I'd be happy to. [LB558]

SENATOR PAHLS: Thank you, Senator. It's my understanding now a focus program is also included in this or am I misinterpreting that? I know you have the focus school. But to me then you have the focus program which is a program within a regular school. [LB558]

SENATOR NORDQUIST: Within, yes. [LB558]

SENATOR PAHLS: And that would also be part of this? [LB558]

SENATOR NORDQUIST: Yeah, it would include focus schools, programs or magnet schools. [LB558]

SENATOR PAHLS: Okay. And now my idea about the cost has been somewhat satisfied by Senator Adams because it's going to be within that array. But I can see right now we're looking for diversity. But then I see there are certain schools within Omaha

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

right now that are...you would classify a focus school, for example, I'm thinking of the King Center. Would that not be? That's a science center. [LB558]

SENATOR NORDQUIST: And I actually need to clarify. The allowance is only for focus schools and programs. That, I believe, is considered a magnet school. So that's a different definition defined in statute. [LB558]

SENATOR PAHLS: Okay. [LB558]

SENATOR NORDQUIST: I wanted to clarify that. Sorry, I misspoke. [LB558]

SENATOR PAHLS: So okay. So you're telling me the King Center would not classify because it's under a different definition? [LB558]

SENATOR NORDQUIST: That's right. Yeah. A magnet school has a home attendance area where focus schools do not. [LB558]

SENATOR PAHLS: Okay. Well, thank you. I need all these little bits of information to help me because I have to be honest with you, when we first started the learning community, I actually thought, after all the discussion, what you're aiming for is part of it right now, that these districts would be...there would be this going on. And later on, I realized, no, each one is separate but unified, supposedly. But it's your understanding that this would not affect statewide TEEOSA? [LB558]

SENATOR NORDQUIST: Within what Senator Adams has expressed, I think, that it would...I mean, very minimally. I don't know, and Senator Adams kind of went through that. And I trust what he explained on the mike, but... [LB558]

SENATOR PAHLS: Right, okay. But that's how...you're on the same wavelength. [LB558]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Floor Debate  
March 28, 2011

---

SENATOR NORDQUIST: Yeah, yeah. [LB558]

SENATOR PAHLS: So there would be some shoveling or moving of money around, but it would be with that schools. [LB558]

SENATOR NORDQUIST: That's right. [LB558]

SENATOR PAHLS: So it would not necessarily affect a school sitting someplace else that's not part of that array? [LB558]

SENATOR NORDQUIST: That's right. [LB558]

SENATOR PAHLS: Okay, thank you. [LB558]

SPEAKER FLOOD: Thank you, Senator Pahls. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR130. Mr. Clerk, items for the record. [LB558 LR130]

CLERK: Mr. President, Senator Lautenbaugh would like to print an amendment to LB512; Senator Hadley to LB387. Senator Wallman would like to add his name to LR40CA as cointroducer. (Legislative Journal pages 986-987.) [LB512 LB387 LR40CA]

And I do have a priority motion. Senator Conrad would move to adjourn the body until Tuesday morning, March 29, at 9:00 a.m.

SPEAKER FLOOD: Members, you've heard the motion. All those in favor say aye. Those opposed say nay. We are adjourned. (Gavel)